Mar 17 2-439 Jurisdiction

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 211.

FREDERICK ROBERT, WILLIAM E. GLADWISH, H. W. BENEDICT, F. W. PARDEE, N. H. BENEDICT, DANIEL McWILLIAMS, EDWARD WHITE, JAMES MONK, AND PATRICK LYNCH, APPELLANTS,

vs.

THE PROPELLER GALATEA, &c., THE PROVIDENCE AND NEW YORK STEAMSHIP COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 27, 1874.

Barney v Watson 207

Reversed

Jno. Clifford to write

SUPREME COURT OF THE UNITED STATES.

No. 211.

FREDERICK ROBERT, WILLIAM E. GLADWISH, H. W. BENEDICT, F. W. PARDEE, N. H. BENEDICT, DANIEL McWILLIAMS, EDWARD WHITE, JAMES MONK, AND PATRICK LYNCH, APPELLANTS,

VS.

THE PROPELLER GALATEA, &c., THE PROVIDENCE AND NEW-YORK STEAMSHIP COMPANY, CLAIMANTS.

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To the Hon. Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Frederick Robert and William E. Gladwish, of New York, Henry W. Benedict, Frank W. Pardee, and Henry H. Benedict, and Daniel McWilliams, against the propellor Galatea, her engine, tackle, apparel, and furniture, and all persons intervening for their interest therein, alleges and articulately propounds as follows:

First. That this is an action founded on collision, occurring on the East River, within the ebb and flow of the tide and the admiralty and maritime jurisdiction of this court, and that said propeller is now within this district.

Second. That at the several and respective times hereinafter mentioned these libellants Frederick Robert and William E. Gladwish were the owners of the steam-tug called the Vim, and of the barges called the Reading and Pottsville, and the libellant Daniel McWilliams was the owner of the barge called the C. J. Hoffman, and these libellants, Henry W. Benedict, Frank W. Pardee, and Henry H. Benedict, were the owners of six hundred tons of coal then on board of the said barges Reading and Pottsville, and the said barges were tight, staunch and strong, well equipped and furnished for the business in which they were engaged.

2 Third. That on the morning of the eighteenth day of December instant, said barges were taken in tow by the said steam-tug Vim, for the purpose of being towed from the vicinity of Jersey City, through the East River and Long Island Sound, to New Haven, in the State of Connecticut.

Fourth. That while the said tow was engaged in the prosecution of said trip, and was in Hell Gate, at or about the point or place known as "Pot Rock," heading about east by south, the wind easterly and the tide about half-flood, and the aforesaid three barges in tow, lashed, the C. J. Hoffman and Pottsville on her port side, and the Reading on her starboard side, the propeller Galatea ran into and came into collision with the said three barges and sunk them, with their cargoes, provision and clothing and articles belonging to the crews. The cutwater of the said propeller struck the bow of the C. J. Hoffman and of the said barge Pottsville on their port sides, and cut them entirely off, passing through them and coming into contact with the port side of the barge Reading forward of her midships, and the result was that the C. J. Hoffman and the Pottsville sunk immediately with their cargoes, and the Reading sunk in about ten minutes, all in very deep water, and, with their cargoes of coal, have become a total loss.

That, to save the tug the libellants were compelled to cut and cast off the lines which connected the tow with the tug, so that these were lost, and the towage which would have been earned by the tug and the freight for the coal on said barges have likewise been lost.

Fifth. That the said propeller Galatea immediately backed out from her position produced by the collision, and, without rendering any assistance, proceeded on.

3 That this collision took place about half-past five o'clock in the morning, with the weather clear and the moon shining brightly.

That the Galatea had seen the lights of the tug Vim when the tug Vim was opposite Astoria, and while the Galatea was on the east side of Ward's Island, and before arriving at Negro Point.

That in those respective positions the tug Vim blew a long signal-whistle, meaning thereby, according to the sailing regulations, that both

vessels should put their helms to port, so that each should keep to the right.

That such signal was answered from the Galatea by a long whistle, by which those engaged in navigating the Vim understood that such signal was so understood, and that each would pursue the aforesaid direction.

That when the Vim had just got above Hallett's Point the Galatea blew a long whistle, which was answered from the Vim, and the Vim continued her course, with the helm as far to port as was safe.

That since the collision libellants have ascertained that the Galatea, on her last outward trip from New York, met with an accident which disabled her steering apparatus, so that her rudder worked imperfectly, and that she had also sustained injuries to her propeller and keel, which they had neglected to repair before coming back, and she was unable properly to be navigated in that part of the river, in view of the tide and other dangers of that navigation.

That owing to such defects, and the want of proper care and skill on the part of those engaged in navigating the Galatea, she came in collision with the tow of the Vim as above stated.

Sixth. That the said collision was caused by the fault or negligence or want of ordinary care and skill on the part of those engaged in navigating said steam-propeller Galatea, and not by the fault, negligence, or want of care of those in charge of the said tug or of the said tow.

4 Seventh. That by and in consequence of the said collision, these libellants Frederick Robert and William E. Gladwish, have sustained damages by the loss of the said barges, their freight, towage, and loss of lines, and losses of the crews, for which they claim the sum of nine thousand five hundred dollars.

That the libellants Henry W. Benedict, Frank W. Pardee, Henry H. Benedict have sustained, by loss of their coal, damages in the sum of thirty-six hundred dollars; and the libellant Daniel McWilliams, by the loss of his barge C. J. Hoffman and its rigging, damages in the sum of four thousand three hundred dollars.

Eighth. Wherefore the libellants pray for process in the form of law against the said steam-propeller Galatea, her engine, tackle, apparel, and furniture, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters hereinbefore set forth, and that this honorable court may pronounce for the claims aforesaid, and for such other or further relief in favor of these libellants as may be consistent with the law and justice of the case, and to condemn the said propeller and all persons intervening for their interest therein, with costs.

FRED'K ROBERT.

PLATT, GERHARD & BUCKLEY,
Proctors for Libellants.

Sworn to before me this 23d day of December, 1869.

GEO. F. BETTS,
U. S. Commissioner.

(Endorsed:) Filed Dec. 23, 1869.

5 *Stipulation for libellants' costs, entered into pursuant to the rules and practice of this court.—Filed the 23d day of December*, 1869.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the 23d day of December,

in the year of our Lord one thousand eight hundred and sixty-nine, by Frederick Robert, William E. Gladwish, et al., against the steam-propeller Galatea, for the reasons and causes in the said libel mentioned, and praying that said vessel be condemned, &c.; and the said libellants and Howell W. Robert, surety-parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattles, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court or, in case of appeal, by the appellate court.

FRED'K ROBERT.
HOWELL W. ROBERT.

Taken and acknowledged this 23d day of December, 1869, before me.

GEO. F. BETTS,
U. S. Commissioner.

6 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Howell W. Robert, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

HOWELL W. ROBERT.

Sworn to this 23d day of December, 1869, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 23d day of December, 1869.

GEO. F. BETTS, *Clerk.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 23d day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Samuel Blatchford, district judge.

THE PROPELLER GALATEA, &c.,
asm.
FREDERICK ROBERT ET AL.

7 And now Isaac Odell, intervening as agent for the interest of the Providence and New York S. S. Co. in the said propeller, appears before the honorable court and makes claim to the said propeller, &c., as the same are attached by the marshal, under process of this court, at the instance of Frederick Robert et al., and the said Isaac Odell avers that he was in possession of the said propeller at the time of the attachment thereof, and that the persons above named are the true and bona-fide owners of the said propeller, and that no other person is the owner thereof; and the said Odell the true and lawful bailee thereof, as agent, wherefore he prays to defend accordingly.

PROVIDENCE & N. Y. S. S. CO.
ISAAC ODELL, *Agent.*

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Isaac Odell, being duly sworn, deposes and says that he resides in the city of New York; that he is the agent of the owners above named, and that the owners of said propeller reside in the State of Rhode Island, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said propeller; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

ISAAC ODELL.

Sworn to and subscribed this 23d day of Dec., A. D. 1869, before me.

GEO. F. BETTS,
U. S. Commissioner.

(Endorsed:) Filed the 23d day of Dec., 1869.

8 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the 23d day of December*, 1869.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court, on the 23d day of December, in the year of our Lord one thousand eight hundred and sixty-nine, by Frederick Robert et al., against the steam-propeller Galatea, for the reasons and causes in the said libel mentioned, and praying that said propeller be condemned, &c., and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by Isaac Odell, agent:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or, upon an appeal, by the appellate court.

PROVIDENCE & N. Y. S. S. CO.,
By ISAAC ODELL, *Agt.*
ISAAC ODELL.
CORN'S H. DELAMATER.

Taken and acknowledged this 23d day of December, 1869, before me.

GEO. F. BETTS,
U. S. Commissioner.

9 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Isaac Odell and Cornelius H. Delamater, parties to the above stipulation, being duly sworn, each doth depose and say that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

ISAAC ODELL.
CORN'S H. DELAMATER.

Sworn to this 23d day of December, 1869, before me,

GEO. F. BETTS,
U. S. Commissioner.

Recorded the day of 187

Clerk.

District court of the United States of America for the southern district of New York.

[Filed the 23d day of Dec., 1869.]

Know all men by these presents that we, Isaac Odell and Cornelius H. Delamater, are held and firmly bound unto Samuel R. Harlow, marshal of the United States for the southern district of New York, in the sum of thirty-six thousand dollars, to be paid to the said Saml. R. Harlow, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 23d day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 23d day of December, in the year of our Lord one thousand eight hundred and
10 sixty-nine, by Frederick Robert et al., libellants, against the propeller Galatea, for the sum of seventeen thousand dollars, on which process of attachment has issued, and the said propeller is in custody of the marshal under the said attachment, and has applied for a discharge of said propeller from the custody of the marshal, and has filed a claim claiming the said propeller, as owner, and has filed a stipulation for the claimants' costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above bounden Isaac Odell and Cornelius H. Delamater shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

PROV. & N. Y. S. S. CO.,
By ISAAC ODELL, *Ag't.*
ISAAC ODELL. [L. S.]
CORN. H. DELAMATER. [L. S.]

Sealed and delivered, and taken and acknowledged, this day of 18 , before me.

U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Cornelius H. Delamater and Isaac Odell, being duly sworn, each depose and say, that they reside in the city of New York; that he is worth the sum of thirty-six thousand dollars over and above all his just debts and liabilities.

ISAAC ODELL.
CORNELIUS H. DELAMATER.

Sworn to this 23d day of Dec., A. D. 1869, before me,
GEO. F. BETTS,
U. S. Commissioner.

11 I approve of the sufficiency of the sureties to the within bond. Dated this 23d day of Dec., 1869.

SAML. BLATCHFORD, *D. J.*

Recorded the day of , 18 .

U. S. district court, southern district of New York.

FREDERICK ROBERT AND WILLIAM E. GLADwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, and Daniel McWilliams,
against
THE PROPELLER GALATEA, &c.

A libel having been filed in this cause, it is hereby stipulated that no process issue thereon to arrest the said propeller, provided the claimants appear on the return-day of the monition, and that a stipulation in the sum of $36,000, in the usual form, to abide and perform the decree herein, with Cornelius H. Delamater and Isaac Odell as sureties, be filed herein on or before the 23d instant, and the said sureties each justify in the said sum of $36,000; and we hereby waive the examination of the said sureties.

New York, 22d December, 1869.

PLATT, GERARD & BUCKLEY,
Proctors for Libellants.

(Endorsed:) Filed Dec. 23 1869.

12 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The claim and answer of the Providence & New York Steamship Company intervening for their interest to the libel of Frederick Robert and William E. Gladwish, Henry W. Benedict, Frank W. Pardee, and Henry H. Benedict, and Daniel McWilliams, against the propeller Galatea, her engines, tackle, &c., alleges and articulately propounds as follows:

First. That the said The Providence & New York Steamship Company are a corporation, created by the laws of the State of Rhode Island, and are the true and only owners of the said steam-propeller Galatea, her engines, tackle, apparel, and furniture, and they claim the same accordingly.

Second. That they are ignorant in respect of the matters alleged in the second and third articles of the libel, except that they admit that in the morning of the eighteenth of December, 1869, the steam-tug Vim had in tow three coal-barges, the names whereof are unknown to these claimants, and was proceeding up the East River or Sound with such tow at the time of the collision hereinafter mentioned.

Third. They admit that two of the barges which were in tow of the said tug-boat Vim came in collision with the said propellar Galatea, there being a strong flood-tide, and that the said tug-boat Vim did cut loose from and abandon the said barges which she had in tow, though for what reason she did so these respondents are ignorant, but they say that, to the best of their knowledge, information, and belief, the third of the said barges did not actually come in contact with the propeller, and they know not the names of the two barges which did so collide,

13 nor what part of them was struck; but they deny that the said propeller ran into the said barges or either of them, and say that, upon the contrary, the tug, with the said barges in tow, drifted down towards and upon the propeller, and the barges so drifting struck against and upon the propeller when she was not moving forwards or towards them, but had stopped and was backing her engines, with a view to avoid them, after perceiving that they were drifting down upon and in danger of running against her, and that the said collision occurred not

at Pot Rock, but about abreast of Negro Point, very near the shore, and these claimants are ignorant of the matters set forth in the fourth article of the libel, except as admitted or stated in this third article of this answer.

Fourth. They deny the allegation that the propeller backed out from her position produced by the collision and proceeded on her way, and deny that she was guilty of neglecting to render any assistance which she could have rendered, but they say that the said barges struck the propeller on her starboard side a little abaft her stem, and thereby turned her round with her stern toward the shore, and the full force of the tide bearing upon her starboard side, so that her headway was lost, and she could not be turned at that place with the tide running as it did, and therefore was by the tide drifted and carried a long distance backward, until she finally reached a position where she could be turned so as to regain her headway, and that when, after this, she came back to the place where the collision occurred nothing was to be seen of the tug or the third barge, and the persons in charge of the propeller supposed that said third barge had been taken care of by the tug. They admit that before and at the time of the collision the weather was clear and the moon shining brightly, so that there was no difficulty in the vessels seeing each other, and they admit and say that the propeller

and the tug saw each other while the propeller was abreast of
14 Ward's Island before arriving at Negro Point, and while the tug, with her tow, was abreast of Hallett's Point, or nearly so. They admit and say that, while the vessels were in these positions, respectively, the said propeller Galatea blew one long signal whistle, signifying that the vessels should put their helms to port, so that each should keep to the right, and that the persons navigating the said tug Vim so understood the signal, and answered by one long whistle, signifying that they accepted said proposal and would put their helm to port, so that each vessel should keep to the right, but they have no knowledge or information that there was any signal from the tug to the propeller signifying an intention to keep or pass to the right, or any signal whatever initiated by the tug, or answered from the propeller, anterior to the signal first given from the propeller, and accepted and answered by the tug when she was about abreast of Hallett's Point, as aforesaid.

And these respondents say that after the Galatea's signal to keep to the right, accepted by the Vim as aforesaid, the Galatea did put and keep her helm to port, and did keep to the right, very close to the shore on the right, or north or northeast side, and as close to the shore as it was at all safe or practicable for the propeller to keep, and was in such position until and at the time of the collision.

These respondents deny the allegation of the libel that, after the said signal to keep and pass to the right, and the tug's acceptance thereof, she continued or kept her course to the right, with her helm as far to port as was safe, or in anywise; but on the contrary, they say that there was ample room for the said tug with her tow, had she continued her course to the right, as she ought to have done, to pass the propeller far to the southward of her, and without coming near her; but that instead of keeping to the right, or the southward, the said tug, with her tow, came across very near to the north or northeast shore, which was

on the left of the tug, and that when the collision occurred
15 the propeller was so close to the shore on the north or northeast, which was her right side, that, on the sheer or turn which was caused to the propeller upon her bow being struck by the barges, the stern of the propeller actually touched the rocks on the shore. These

respondents say that the said collision was wholly attributable to the tug with her tow having gone to the left instead of the right, and her doing so was either willful or gross mismanagement, or was, as these respondents suspect may have been the case, owing to the tug having a tow heavier than she had strength or capacity to manage, and consequently becoming unmanageable, and being drifted out of her course by the force of the tide.

That as soon as the fact that the tug and tow were drifting, or coming out of their proper course and towards their left, or the north or northeast shore, as aforesaid, and that there was consequent danger of a collision occurring was discovered or discoverable on board of the Galatea, the persons in charge of the Galatea, keeping as close to the north or northeast shore as possible, slowed and stopped their engine, made the proper movements for backing, and took all steps and precautions possible to avoid a collision, but that owing to the said tug and tow coming, and being carried so far out of their proper course and so close to the north or northeast shore, which the propeller was hugging, as aforesaid, the said collision occurred and could not be avoided by any action on the part of the Galatea.

These respondents deny that by reason of any such occurrence as in the said libel is in that behalf alleged, or in anywise soever, the steering apparatus of the Galatea had been or was disabled, or that her rudder worked imperfectly, or that she had sustained injuries to her propeller and keel, or either of them, so as to render her unable properly to be navigated in that part of the river, in view of the tide and other dangers of that navigation; and they say that the injury which
16 the said propeller had sustained on the occasion in the libel referred to did not at all affect the steering-apparatus, but was merely to one blade of her wheel, and in nowise impaired her manageableness, and in no way contributed to the said collision. And they deny the whole and each and every part of the allegations of the libel that, owing to such alleged defects and the want of proper care and skill on the part of those engaged in navigating the Galatea, she came in collision with the tow of the Vim.

Fifth. They deny all the allegations of the sixth article of the libel, and allege the contrary thereof, and they are wholly ignorant and uninformed in respect of the matters alleged in the seventh article of the libel.

Sixth. These respondents say that the said propeller, Galatea, was, at the time of the said collision, on a voyage to the city of New York from Providence, whence she had sailed on the preceding afternoon, and was duly pursuing such voyage in the usual course. That said steamer and her engines and machinery, with all appurtenances, were sound, staunch, and in good order and condition, and she had proper, competent, and adequate officers and crew, and a proper and competent lookout duly stationed and attending to his duty, and that the collision aforesaid was in no wise produced by or consequent upon any fault, misconduct, or negligence on the part of the said propeller or those navigating her or having her in charge, but was wholly occasioned by the fault of the said tug and tow as hereinbefore set forth.

Seventh. That all and singular the premises are true.

17 Wherefore the said claimants and respondents pray that the said libel may be dismissed, and the libellants condemned in costs.

ISAAC ODELL,
Agent P. & N. Y. S. S. Co.

Sworn this 26th day of January, 1870, before me.
[SEAL.]
A. W. GREEN,
Notary Public, N. Y. County.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Claimants.

CHAS. F. SOUTHMAYD,
Advocate.

(Endorsed:) Filed Jan. 26, 1870.

Judge Blatchford's minutes of testimony on hearing.

U. S. district court.

FREDERICK ROBERT
vs.
THE PROPELLER "GALATEA," &C. } May 17, 1871.

MAY 18, 1871.

WILLIAM P. BRAINARD sworn:

Age, 31; was captain and pilot of steam-tug Vim at time of collision; had been nine years connected with steam-tugs; been towing through Hell-Gate for last nine years in towing business; been nine years piloting vessels through Hell-Gate; that is the place where my towing business has been altogether done for nine years prior to this present time; know channels and mode of navigation; the Vim is a pro-
18 peller, 18 inches x 20 cylinder, 55 feet long or 65; pilot-house is on upper deck, on top of main-house on deck, all windows all around; it is about fifteen feet from bow; the Vim can take through the Gate four or five loaded coal-barges, all alongside; usual tow is about four loaded boats, two each side; on trip in question we had one deck-hand, Alfred York; he was in pilot-house with me at time; with me, going through; engineer, Christopher Brooks, one or two firemen—not positive; they are not with me now; Brooks and York are with me still; we had a cook and steward—one person; no one else on board; that is usual and ordinary crew for a boat of our size: we started from Jersey City on this trip about three to three and a half a. m.; intended to take the flood-tide through the Gate.

We had three boats, two on port side and one on starboard side; the one next on port side was Pottsville, to her port the Hoffman, on starboard side the Reading; they had coal on; they were to be taken to New Haven by us, all the way; they had what is generally called a full load—each of them; they were boats that ran through the Delaware and Raritan Canal; the immediate starboard and immediate port boat had each a wheel aft; the outside port-boat had a tiller; these boats had a hold, and a flush deck; the Pottsville and Reading had two hatches, and the other two or three; the Pottsville and Reading belonged to Gladwish & Robert, my employers; the Pottsville and Reading would carry more coal than the Hoffman; the boats projected 15 to 20 feet ahead of propeller; bows of canal-boats were all on a line—even; that is the usual way of making up a tow; spring-lines, stern-lines, head-lines, and breast-lines were the fastenings; these are the usual lines, and they were fastened in usual way; the head-lines and stern-lines belonged to the tug; they were good; the spring and breast lines belonged to the canal-boats; they were good.

It was a bright moonlight night as we went up; a little overcast;

when we got into the Gate the tide was about the strength of the flood.

19 I had a green light, a red light, and a stern-light, and a head-light; proceeded on in ordinary way. I was at the wheel, just abreast of ferry on Astoria side, I told captains of canal-boats to stand by their wheel, all three of them; they came out and stood by their helms. When I was about abreast of Flood Rock I saw lights of a steamer; I saw their head-light, white, their green light, and their staff-light, white, stern-light up high. I was about half way from Flood Rock to Astoria shore when I first saw the lights of the steamer. Saw them clear of Hallett's Point, and across the land at Negro Point, and they were then, as I thought, up about Negro Point bluff. I saw the lights come out past Negro Point bluff. The land at Negro Point, on coast-survey chart, is low and flat; I could look right across the land at Negro Point.

On seeing these lights I blew one long whistle. That signified to go to the right; I at that time told the captains of the canal-boats to put their helms to port. I received one whistle in return; exactly same kind of whistle as I gave; I received the answer of one whistle from the steamer before I told the captains of the canal-boats to put their helms to port.

When I blew my whistle I was just about abreast of Flood Rock. Just as I got abreast of Hallett's Point, the steamer, the Galatea, blew one whistle to me; I answered her with one whistle. When I blew my answering whistle I saw her hull coming down by the low land at Negro Point, very nigh abreast of the point; at that time I saw only her green light, head-light, and stern-light; never saw her red light before the collision; at that time we were heading about east by south, by compass; we were going under port helm all the time.

I was at A × on chart when I so blew in answer to Galatea's whistle, and saw her hull as I have stated. I was then on a port helm; we all ported our wheels; I got to about abreast of Pot Rock, in Pot Rock, towing my tow to southward until I steadied them, (marks

20 dotted line showing course of tow from A to Pot Rock, place of collision was on word Pot on chart.) Pot Rock is under water; no rock above water. From time I saw the Galatea's hull she came out by the point across the tide into me at the word Pot; I, all the while, saw her green light and not her red; she hit first port side of Hoffman, about ten or twelve feet from Hoffman's stem; cut through her; cut bow of Pottsville off also, then went past my bow and hit port side of Reading and mashed it. I saw the Pottsville and the Hoffman after they came up and drifted into eddy near what is marked Way's Reef on the map; I saw them about fifteen or twenty minutes after collision; they had spilt their coal; the Hoffman's deck was off; her bow was cut off. The Pottsville's bow came up separate from her stern; the Reading did not sink immediately; I got a line to her, and towed her into Pot Cove, and she sank in there; picked her up about Way's Reef. I am acquainted with course of tide and eddies. The Galatea struck head on, stem on, the port side of Hoffman, square on, at right angle; after collision I saw no one on deck of Galatea; heard not a word from any person; she was high above me; she cleared my bow four to five feet; she either backed or drifted clear of me. Some of my men were overboard; I picked them up; went to the Reading; got a line to her, and towed her to Wall in eddy; after I left her she went down. Afterwards the Galatea came down and passed me. After I left the Reading at the Wall, I went on to the eastward, and passed the Galatea [illegible] to eastward of Negro Point Bluff, she coming to westward.

Cross-examined:

I was never on steamer of size of Galatea; there is an eddy tide to south of the Pot; I always go between Pot Rock and Negro Point; I did not put my wheel hard aport; ported it just enough to swing
21 my tow to southward; put it five or six spokes to port; could have put it fifteen to twenty spokes over. I did not consider it safe to put it any further over; the eddy, if I had got into it, would have set me back to Hallett's Point. I had nobody as a lookout forward. The Vim, by her certificate, could carry sixty-five or seventy pounds of steam. I was going at my usual rate of speed with such a tow; when I responded to the Galatea's whistle, I ported wheels on my boats, swung to southward, rang one bell; then, when I saw her coming head on, I stopped my boat, and gave bells to back; hooked her on; engine was stopped; was going with tide; bluff is so high I could not see the Galatea to eastward of it, or she me; as the light was, I could see bluff and Negro Point; when I first saw the lights, opening out from the bluff, my wheel was about amidship. I then whistled first before the Galatea, and got one in answer; the answer was immediate. I told the bargemen to port, and when I had swung far enough to southward, I told them to steady; when I gave them the order to port, my wheel was aport; I put my wheel to port the first whistle I blew and kept my tow to southward, enough to hold my tow close over to eddy; steadied it so as not to go into eddy; brought our wheels steady again; when I got the Galatea's whistle and answered it, I told them to put their wheels to port again; then steadied again; at collision our wheels were midships and steady; there were more than one whistle from each steamer; at collision we headed about east by south; the line I have drawn from A x to Pot is about east by south half south; we were at edge of true tide, between that and eddy on south; my outside port boat was in true tide, and my starboard boat was at edge of eddy. I watched the Galatea from the time she opened out at Negro Point. I observed no change in her heading after she came out from the Point. I think she went in a straight line across the tide and into me, on the line I have marked
22 on the map. I heard no bells on her, and observed no slacking of her speed; she was going against a seven-knot current. I did not see her swing or change her direction; my tows were so lashed that I could cast one off without casting off the three. I cast all three of them off by cutting and letting go the lines. I might have kept the Reading fast if I had not known she was sinking; she was sinking all the time; ten to twelve feet of bow of Hoffman cut off. I think Galatea's helm hard aport from time she came out from Negro Point till collision. If she had kept that course, she would have hit east of Hallett's Point. The engineer was in the engine-room that night; saw him just before we got into Gate.

Redirect:

I think Galatea was under port helm from Negro Point till she came into me; the tide caught her starboard bow as she came out by Negro Point, with her wheel hard aport; she would not answer to her wheel till she got her length into the tide, and she would then gradually swing to starboard; if she had been further into true tide, and not close to Negro Point, she would have felt her port wheel; engine-room is on main deck.

Recross:

Tide took stem of Galatea just after she opened by Point; when I saw hull of Galatea coming out by Point, I told man in pilot-house with me,

York, that the Galatea was so close to Point, I thought when she struck the tide she would come clear over to us before she got her head around to tide; if I had gone into eddy when I struck it, it would have slewed head of my tow to starboard—would have carried me to Hallett's Point. I meant to keep out of eddy, and not to go to south of Pot Pock; there was room for both of us between Pot Rock and Negro Point. I
23 slowed at A; did not stop and reverse. I would not have liked to go into eddy. I don't think I would have gone ashore, if I had got into eddy.

PATRICK F. LYNCH sworn:

Was in tow of Vim at collision, on the C. J. Hoffman; was her captain; was steering her when Galatea came into me; had been at her helm for 10 minutes before collision; I saw the boats come together; it was beyond Hallett's Point; the Galatea struck us athwart ships; cut bow off our boat, and through the Pottsville, and far enough into Reading to sink her; I saw deck of my boat afterwards; it was a clean, square cut across; I saw her deck, not the rest of her; got upon the deck and saw the cut; saw the Pottsville a day or two afterwards in a big cove close to Hallett's Point; she was cut square across; blow on Reading was 12 or 13 feet from stem; the same on my boat and the Pottsville.

Cross-examined;

Never have seen hull of my boat.

JAMES MONK sworn:

Was master of Pottsville; was in tow at time of collision; was at my wheel at time of collision; had been there 10 or 15 minutes; went there by direction of captain of tug; he first told me to stand by wheel when we were near Astoria ferry; then he told me to port close by Hallett's Point; I ported; the Galatea took my bow off, even cut, about 15 feet from bow; the Pottsville came up afterwards; I saw her two pieces; one is now in big eddy; the other at Hunter's Point; her bow was cut clean off; I was looking at Galatea when she came on; she came straight across into us; after she hit me she struck the Reading; I heard one bell ring on tug before Galatea came into us; one bell to slow the boat down; can't say I heard a bell to stop and back.

24 Cross-examined:

I put my wheel seven or eight spokes to port; then got order to steady; did not get second order to port; I steadied when he told me to; had been through the Gate on the Pottsville before.

Redirect:

Had met big boats in that place; I saw the Galatea as she was coming out of Negro Point, and as she approached Negro Point; I never saw any come as close to the Point as she came; I know the big eddy south of the Pot Rock.

Recross:

When I first saw the Galatea, I thought she was closer to Negro Point than I had ever seen a vessel before; I think she was her own length off from Negro Point; from Negro Point the Galatea went across the tide.

EDWARD WHITE sworn:

Was master of Reading; she was in this tow; she was on starboard side next to tug; at collision I was standing by wheel; been there 10 or 15 minutes; captain of Vim told me to go there, about 10 minutes before we got to Gate; he afterwards sung out "Port," and then "Steady;" I saw the Galatea come into tow; she ran straight across channel; she went through bows of Hoffman and Pottsville, and came into me, into side; I heard the wood go in against coal; my boat sank; I jumped for tug; blow slewed my boat towards eddy; I think head-lines broke; the Reading went down five or ten minutes after blow; the Reading did not come up; she lay where she sank, close to shore, in low water in eddy, in Pot Cove; towed through there before, not since; collision was to eastward of Hallett's Point.

25 Cross-examined:

Had my wheel steady when hit; got second order to port, to port a little; ported two spokes.

CHRISTOPHER BROOKS sworn:

Engineer; followed that about six years; had charge of engine of Vim at collision; was in engine-room; felt blow; it rolled the Vim over so that the water came on deck; before collision I got one bell to slow, and a short time after that I got one to stop and two to go back, and then a single bell to back as hard as I could; at collision, engine was working back; in that tide could not have got back-motion so as to overcome force of tide.

Cross-examined:

No one in engine-room with me at time of collision; had one fireman, Eugene Brando; have not seen him in a month; saw him last on the boat; not employed there; he was on deck at collision; after collision he continued a month in employ of Vim; new cylinder put into Vim two months after collision; she used too much steam with her old cylinder; put it in to save fuel; no difference between the two cylinders; same size; difference in the valves; saved one-half to three-quarters of a ton of coal in 24 hours; old cylinder was 18 x 20; same as now; same power as now; she carries same steam with her new cylinder, 70 pounds; used that that night going through Hell Gate; cylinder put in new in Chester, Pennsylvania; Ramsey did it; in spring of 1870 she was inspected; when I got bell to slow, I shut steam off part way; she was wide open, and I shut off half; went on so until I got bell to stop, then shut off the rest, and she was stopped; got three bells altogether; then got single bell; then open to give her steam; turned steam on, after that blow came.

26 GEORGE CARNOW, sworn.

CHRISTOPHER BROOKS, recalled:

Cross-examined: collision. Before

I had not been in pilot-house before we got to Gate. I came out, got drink of water, and while I was out spoke to the captain.

WILLIAM E. GLADWISH, sworn:

I own the Vim. Robert and I owned the Reading and Pottsville; saw the Galatea third day after collision; saw her on dry-dock at Hoboken. I have been about ten years in towing business; saw a great portion

of keel had been carried away, mostly aft; parts of whole depth of keel gone; new work being put in; shoe that rudder sets in was off to be straightened or welded; one flange off of propeller—four in all; one off close to hub; stern-bearing that shaft lays in was burst open. The Galatea is high above canal-boats; she is a propeller. There was a new piece put on way up above where we could strike her; saw persons in charge of her with uniform caps on; I asked them about this collision.

(Objected to as inadmissible; evidence excluded.)

I understood the person with whom I had the conversation was the mate. I saw the stern of the Reading and both ends of the Pottsville after they sank; I saw the after end of the Pottsville in Pot Cove; saw it next day after collision; it was on shore, bottom up; it was cut straight across, clean cut; saw bow at Twenty-sixth street, East River, next day after collision; clean cut; stem not injured; no abrasion on bow; iron on stem as good as ever; saw *sansom*-post of Reading in Cove; went again with ship-carpenter to see the Galatea.

Cross-examined:

When I saw the Galatea they had a good deal of new wood in her keel.

MAY 19TH, 1871.

ALFRED YORK, sworn:

27 Age 31; tugboating; follow water; followed water eleven years; was employed on Vim in December, 1869; was deck-hand; was not in pilot-house at collision with Galatea; was on deck by the cleet on starboard side, about abreast of pilot-house; had been there from time the whistles were blown; saw the boats come together; the port-boats were struck first; the Galatea struck them, and cut off the boats on the port side, and passed by the Vim and hit the boat on the starboard side; can't say at what angle; saw one boat afterwards which we towed ashore in the Cove; she did not go down; they said she was leaking; we towed her in. I gave them the lines; the two boats on port side sank pretty quick. I felt the shock of collision; the shock knocked me on to the boat on starboard side; the Vim keeled over to starboard; off Flood Rock I noticed the Galatea south of Hallett's Point, about abreast of gas-house; the lights of Galatea where on bow and flag-staff. I saw her green starboard light; did not see her red light before collision; when I saw the lights the Galatea was about abreast of Negro Point bluff, about 200 feet above the dock; we were nearer to Flood Rock than to Astoria shore; when I saw the Galatea's lights we had whistled; we whistled once; the Galatea answered once, off Flood Rock; then the Galatea blew a second whistle before she opened out by Negro Point; the whistles were blown to put helms to port. I was looking at the Galatea. I have been in habit of towing up through Hell Gate; have observed course vessels coming from eastward take; can't say how close the Galatea was in shore. I think as she came out by the point the tide took her starboard bow and sent her over towards Hallett's Cove. I cast off a line after the collision.

Cross-examined:

I had been on the Vim a month or two; had been through the Gate with her before; generally towed coal; one to five barges; remem-
28 ber fireman Eugene Brando, who was on board that night; he is on steamship Lodona now, sailing to New Orleans. I saw him here May 5, this month; after collision I saw him on deck. I was on

deck abreast of pilot-house when first whistle was blown. I was not in pilot-house going through the Gate; about abreast of Flood Rock we blew the first whistle; nothing had then been heard from her. I saw her lights before we blew; head and staff lights; must have seen her green light; am sure I did not see her red light; took her to be about off the bluff when I first saw her; could not, from where we were, see she was not in the usual course of vessel coming through Gate; when we blew we were nearer to Flood Rock than middle of stream in true tide. I don't know whether we got out of true tide before collision; we try to keep in true tide. I know where Pot Rock is. I think we were pretty well over towards Pot Rock when [redacted] struck; drifting towards Steep Rock with tide; that is the way tide runs; we were on Long Island side of Pot Rock; we were nearer the Pot than to Negro Point; one whistle is to port; could not hear bells rung on tug from where I was; the tug could tow those boats about three knots; she stopped before she was hit; could not tell if her speed was slacked; she must have slacked her speed if she stopped. I saw the timber and coal of boat go up on starboard bow of Galatea about ten or fifteen feet from stem. I think the Galatea hit the second boat. I continued on the Vim till she was laid up the same winter, January 13th or 14th; Christopher Brooks was engineer that night; did not see him about time of collision.

FREDERICK ROBERT, sworn:

In towing business; been in it four or five years; interested in Vim; Gladwish and I owned the Pottsville and the Reading. I served my time in a machine-shop for three years; have run engines and owned them; repairs on Vim were made under my supervision; contract for altering Vim's cylinder was closed about December 1st, 1869; 29 small leakage; Vim employed towing barges through Gate for five years back from now; she generally towed barges loaded with coal; generally only went through Gate; sometimes to New Haven; the barges generally carry 250 to 275 tons of coal; the boats are square boxes pointed little at end; the majority of them come through Delaware and Raritan Canal; usual complement through Gate has been four boats, two on each side; Vim is 70 feet long, 17 feet wide, and about 9 feet depth of hold; the barges were about 110 feet long, 20 to 22 feet wide, and about 10 feet hold, generally; the Pottsville was 108 feet long, or 110; 17 feet 6, or 17 feet wide, and 9 feet or 9.6 depth of hold; the Reading was about 5 feet or 7 longer than the Pottsville, and about 1 foot wider, and same depth; the Hoffman was 17 feet wide and 103 feet long; the Reading used to be loaded 330 to 340 tons of coal, and the Pottsville 302 or 303; the Hoffman would carry about 260 or 275 tons.

After collision, I saw the Pottsville, the following week; saw part of it the following week, and the bow Sunday, two weeks after; saw the bow at Hunter's Point and the rest in Pot's Cove; I recognized the bow of Pottsville by iron on bow, which had been put on, contrary to my orders, about two months before; there was about fifteen feet of bow of Pottsville on bank at low water; deck gone, so you could look in, but was sound; knees, in part of bow which join sides to stem, were there; stem-iron on, but back timbers were cut—clean cut; no injuries to stem except loss of deck; no crushing at stem; iron not injured; the parts of the rest of the vessel where this would join looked as if cut; back of cut it was pressed in for ten or fifteen feet; bottom was cut clean; I saw Galatea on dock the Monday after collision—the collision being Saturday, the 18th, 5 a. m.; saw the Galatea the 20th, on dock; could examine her outside; did so; made memorandum at time; I have the memo-

randum; there was a propeller screw, with four blades, that had
30 come off of her; it had one of the four blades broken off close to hub; there was a new screw ready to go on; saw the old one and the new one on dock; the new one was slung in chains, ready to go on; at this time there was none on vessel herself; the two pieces of iron that form shoe were lying at side of stern-post; they had red scale on, as if they had been lately in fire and hammered. The shoe is the connection between rudder-post and stern-post of a propeller; in a great measure it is support of rudder, to steady lower part of rudder and keep it in position; shoe on Galatea is partly of wood and partly of these iron pieces. The piece of wood was entirely a new piece, running forward thirty or forty feet into keel, and scarfed; forward of that, other pieces let into keel; at bow, cut-water had been renewed from about water-line to level of keel, going back a little on keel, and scarfed. One place in keel where new wood not put in; I measured it; it was 5¾ inches deep; looked as if knocked out; heavy scratch on port bow, and three or four little pieces of plank set in on starboard side; they were up by the guards, eight or nine feet above water-line, right up under the guard; scratch on port side ran aft, at an angle of 45 degrees; started at water-line and ran towards keel aft, at an angle of 45 degrees; stem-iron had been repaired; perpendicular iron.

Cross-examined:

The Vim was built in 1863; I don't own her now. The Reading and Pottsville were pointed; the timbers of deck laid crosswise, and plank lengthwise; saw in Pot Cove 65 or 70 feet of stern. My memorandum is bow iron repaired; can't say what it was; scratch on port side began close to bow and ran aft; was 6 or 7 feet long; even chance whether it was or not scratch of anchor; the Pottsville and Reading we had owned for nine months; don't know how old they were.

DAVID DECKER, sworn:

31 Steamboat pilot; been so twelve years; am now on tug Game Cock; know the Vim; the Game-Cock is larger than the Vim; have known Vim five or six years. My business is towing vessels through Gate. I know localities in Gate on chart; know course of tides there, when flood at strength. I think I know what can be done with a tow in going through that passage. I know the Galatea; well acquainted with her; going east with tow, I have met steamer of size of Galatea coming out by Negro Point; lots of them; from Negro Point bluff, usual course is to keep steamer coming from east in true tide, as lines in chart are, so you can handle her. The lines are the true tide. If steamer coming from east is not in true tide, but is nearer north shore, and comes out from Negro Point, with port helm, a ship of that size would have to reach into that tide three or four times her length before she would mind her helm sufficiently to come up head on to it. That would be traceable to cross-tide coming over Hog's Back. It would strike the vessel on starboard bow, and send her off to port. I mean a flood-tide. If they hove helm hard aport when they first struck tide, the leverage on starboard bow would overcome port helm, and she would reach out her length into tide before she would mind her helm. If she came in true tide with dotted lines that thing would not occur. There is an eddy-tide making into Pot Cove, between Hallett's Point and Woolsey's bath-house. Been towing through Gate eight years; taken coal-barges through, and all other barges, alongside and astern to hawser. I have seen the effect on a vessel going through with the strength

of flood, of getting into eddy-tide between A and Pot Rock. I have seen more than one get out of the true tide into eddy-tide and go on the rocks by Wolsey's bath-house. I have seen a vessel hit at Woolsey's bath-house, and finally go ashore at Scaly Rock. The eddy-tide is an opposite tide from the true one. The eddy-tide exists from Hallett's Point to Woolsey's bath-house. A loaded vessel
32 getting out of true tide into eddy would go ashore nine times out of ten. The effect on a tow like the Vim's would be greater, because more body to affect. I never took a tow through the eddy in strength of flood. I do not think it could be safely done. The reason of it is, in going out of the true tide into eddy, your boat would turn head on to the shore, in spite of all the rudders in creation, before you could turn her. As you turned into eddy, it would strike your port bow, tending to force you to starboard. Helm hard aport, and you would go ashore before you could get control; eddy striking on port bow. If you put your helm hard to starboard as quick as you could, she would not mind her helm. Before she could swing around she would go ashore. It would make no difference whether you ported or starboarded in eddy, she would go ashore.

Cross-examined:

I do not own Game-Cock. She belongs to libellant, Gladwish; been in his employ two years. Game-Cock is about 60 tons. Her cylinder is 24 by 20. She tows one to six boats through Gate. I first heard last night I was to testify in this case. I have steered two or three gunboats; acquainted with eddies in Hell Gate from 13 or 14 years old; never saw a steamboat go ashore that way. All I have seen were sailing-vessels. I have not navigated large steamers through the Gate either way. A tow going east with flood-tide must keep in true tide.

MAY 22, 1871.

BENJAMIN SPRAGUE, sworn:

Hell Gate pilot; been so two years next September; acquainted with course of tides and eddies between Hallett's Point and Negro Point; also with eddy about Pot Rock. During that time have piloted tows through that passage, several, at different stages of tide; at strength of flood-tide. Dotted lines on chart indicate run of tide. There is a small eddy to southward of Pot Rock. When tide is strength of
33 flood, it makes the eddy smaller. As tide weakens, the eddy is larger. The eddy I speak of is a tide in the reverse direction of true tide. I never get into eddy going up in flood, because I would calculate to go ashore if I put her there; am acquainted with course of tide around Negro Point. I know size of the Galatea. If steamer of size of Galatea is coming around Negro Point, and is closer to north shore than the dotted lines, the tide would strike her on her starboard bow. She would naturally sheer to port, towards Long Island. She could not counteract that sheer by a port helm until after she went her length in tide.

Cross-examined:

I am a licensed pilot; been so since one year ago last September; been piloting through Hell Gate before; have piloted all kinds of steam-vessels through there; best time to go through with three loaded barges is to go with fair tide; on flood-tide I have not seen vessels cross eddy and go around Pot Rock; have never known a disaster to a steam-vessel by means of this eddy.

FRANCIS BELL, sworn:

Hell Gate pilot, licensed for five years; been on vessels through there for twelve or fifteen years; navigated tows through there, 50 to 75; know the Vim; know' her eight or nine years; she has power to tow three loaded coal-barges through there at any time of flood-tide; have taken her through there with four loaded large schooners; with Vim and three loaded coal-barges, one on starboard and two on port, at strength of flood, if I had got to A on chart, and met the Galatea coming out by Negro Point, and saw her affected by tide and bearing down on me, I could not go with safety to south of true tide; would want to keep out of eddy, so as to avoid being turned around; after you had got into eddy by porting helm, you could not starboard and get head to eddy again.

Cross-examined:

Never been in employ of libellants.

34 MAY 23, 1871.

HENRY LOCKWOOD, sworn:

Business is tow-boating; been in it about nine years; am now on tug Pluto; am master of her; have towed through Hell Gate tows with a tug-boat very frequently; am acquainted with locality between Negro Point and Negro Bluff, and tides and eddies there; know the steam-tug Vim; have seen her tow vessels through there.

Q. In your judgment, is she a boat of sufficient capacity and power to safely and securely tow three barges loaded with coal through that passage at those times of tide when it is ordinarily accomplished?

(Objected to, that question does not point to circumstances of case as presented by plaintiff's evidence; that the only question presented by plaintiff's evidence is as to capacity of tug to take her barges out of the tide; objection overruled; exception.)

A. She is; I have frequently seen her towing barges through there; I have seen her have five; know the Galatea; the dotted lines on chart represent true set of tide; tug could not on strength of flood put her helm to port at A, and go out of true tide without danger, with tow, because the tide would set her on to the rocks if she got out of the true tide; I mean on to Steep Rocks; Steep Rocks run from Scaly Rocks to Woolsey's bath-house; at high water the rocks are under water; at low water you can see the ripple, and some close in shore are out of water at low water; if I had charge of Vim, and had two coal-barges loaded with coal on port side, and one of similar character on starboard side, and had got to A on map, and had received a signal from approaching steamer of size of Galatea, signal being one long whistle, and I had answered that signal by one long whistle, it would not have been safe for me to port my helm and helms of tow so far to port as to carry my tow to right and into eddy-tide.

35 Q. Would it have been safe to have ported helm so as to have carried tow out of true tide as shown by dotted lines?

A. No, sir; on right of the lines there is a bubble from Pot Rock, a broken tide, which makes your tow unmanageable; if helm is put far enough to port to throw bows to right of true tide, would have set her ashore, I think, broadside first; could not have starboarded immediately after porting; between Hallett's Point and A, could not have ported and gone through safely.

Cross-examined:

Have been in Gladwish's employ; was so for three years; left three

years ago next October; commanded the Game Cock for him; we generally try to go through at beginning of flood; safer then; the very strength of the flood is the most dangerous time with a heavy tow; on strength of tide no tug can take three barges through from Hallett's Point to Negro Point except by keeping in true tide; width of true tide differs as tide advances; between A and Pot Rock width of true tide at strength of flood, about half flood on full of moon, is 300 to 350 or 400 feet; it is wider at A and narrows towards Pot Rock, and widens east of Pot Rock again; off Hallett's Point 500 feet wide; safe anywhere in width of true tide; not safe to take Vim and loaded barges directly over Pot Rock; right-hand edge of true tide going east is close to Pot Rock.

JAMES FRANKLIN, sworn:

Steamboat pilot; been in that business ten years; am now on the E. W. Gorgas; got a license; had it five years; not been in employ of Robert or Gladwish; been in habit of taking tows through Hell Gate; know the Vim and the Galatea; know localities between Hallett's Point and Negro Point, and course of tides and eddies there; heard evidence of last witness; the Vim, with two barges loaded on port side
36 and one on starboard, could not be safely manœuvred between A and Pot Rock, so as to put her to right of true tide, because action of tide would set her ashore on Steep Rocks, or in that neighborhood; could not, after porting, starboard and pass to eastward.

Cross-examined:

My opinion is founded on experience; never went out of true tide; know of no Hell Gate pilot who ever did; my opinion is founded on my knowledge of currents; would choose to go through at slack-water, so as to have no broken tide; most dangerous time is strength of flood.

GEORGE W. STEVENS, sworn:

Hell Gate pilot; been so five years; got a license; had it five years; not in employ ever of Gladwish or Robert; been in tow through Gate frequently; know the Vim; heard testimony of Lockwood and Franklin; agree with them as to danger of going to right of true tide between A and Pot Rock; think tow would go ashore on Steep Rock; if she got out of true tide into broken tide, she would go ashore before she could get back; she could not break her sheer before going ashore.

Cross-examined:

I speak from my opinion—from what I have observed of the current; at slack-water there is no broken tide, but he can go through safely on strength of flood if he keeps in true tide.

Redirect:

Nothing risky in Vim going through on strength of flood if she keeps in true tide.

WILLIAM LOCKWOOD, sworn:

Hell Gate pilot; got a license; had it about forty years; do not know Robert or Gladwish; am a general pilot; have taken tows through Hell Gate very frequently; daily; studied action of tides and currents in Gate; heard Lockwood and Stevens testify; I have been through Pot tide with a brig once; had good motion, and I went over
37 Pot; had to do that or go foul of a ship at anchor; Vim, with

three barges loaded with coal, could not safely go through Pot tide; tide breaks over Pot Rock, and causes various whirls of tide; at strength of flood, with Vim, I would have kept in true tide if I could; if I had got out of true tide I would have gone ashore a little south of Steep Rocks; have seen the Galatea frequently.

Cross-examined:

Age, 76. On strength of tide we keep north of Pot Rock.

CHARLES LOCKWOOD sworn:

Son of last witness; am Hell Gate pilot; have license; had it 25 years; piloted all kinds of vessels through Gate; not had charge of Vim; been through with other tugs; know the Vim; at strength of flood she could go through in true tide with tow; not safe to get out of true tide with ordinary tow of 600 or 700 tons; Vim's tow not unusual for her.

Cross-examined:

Not too heavy for her at strength of flood if kept in true tide.

JOHN D. BOWNS sworn:

Master of steamer Continental; been 35 years through Hell Gate; the Continental runs to New Haven; never had charge of tow through Gate; heard evidence of old Mr. Lockwood and the young one.

GEORGE MOORE sworn:

Business is tug-boating; been in it about eleven years; last boat was the Nellie; never in employ of Gladwish and Robert; taken tow through Gate at all times of tide, including strength of flood; cannot get there on slack of tide and leave New York with a tow; know Vim; seen her tow through Gate with five barges; three is not an out-of-the-way load for her; heard evidence this morning of Franklin and others;
38 not safe on strength of flood to get out of true tide with tow; before could get into eddy would go ashore on Steep Rock; the whirls of tide on edge of eddy and true tide would put her ashore.

Cross-examined:

Age, 35; seen vessels go ashore there.

GEORGE SCOFIELD sworn:

Hell Gate pilot; been so between seven and eight years; have a license; been through the Gate in tows; know tides between Hallett's Point and Negro Point; heard evidence in court this morning as to course of tides; dangerous to go to right of true on flood east of Hallett's Point; danger of going ashore on Steep Rock. I know the Vim. With three loaded barges, and one whistle received from large steamer coming from east, I would not like to port my helm a great while after coming by Hallett's Point.

JOHN MCNEIL sworn:

Captain of steamer that runs to Bridgeport, the J. B. Schuyler; followed steamboating since 1854; made daily trips night and day between New York and Bridgeport; have had charge of the Traveller, the Champion, and the Elm City, running through the Gate; met tugs with barges going through Gate at different times of tide; at strength of flood tugs

and tows going to east must keep in true tide; never saw one turn out of true tide and get back; met them night and day; never saw a tow go out of true tide and get back; my boat could not turn out of true tide at A and get back before getting to the Pot Rock; would run risk of going ashore at Steep Rock; know the Vim; she can tow three loaded coal barges at strength of flood through Gate; that is the general time for doing it; it is proper; abreast of Negro Point, coming from east, I have met tows; boat going against tide is easier handled than one going with tide; you cannot go astern by land against the tide in Hell Gate; there is a tide comes around Hog's Back and passes short distance from Negro Point that would strike a vessel that came too close to Negro Point and shove her over; she would steer her length into tide before she would feel her helm; her stern being in one tide and her bow in another; can stop east of Negro Point.

DEFENCE.

JOSEPH W. NYE, sworn:

Master of the Galatea; was so at collision with Vim; been in charge of the Galatea about three years; been in employ of this line nearly seven years; been pilot on Sound about thirty years; piloted nothing but steamers through Gate—generally passenger-steamers; seafaring man all my life. The Galatea is 245 feet long, 40 feet beam, and 7 feet guards—54 feet wide over all; tonnage, 1,566. She draws, when loaded, 14½ feet aft and 10 feet forward. She had a keel 20 inches deep, and under that a shoe of 6 inches, which extended out 6 feet by her main stern-post. Her rudder rested on shoe with iron stern-post; route from Providence to New York; three trips a week. On night of collision drew 14½ feet aft and 10 forward; left Providence 5 p. m. We had two pilots, two wheelsmen, two mates, watchman, and eleven men crew, two engineers, two oilers, six firemen, and two coal-passers. She carried green and red side-lights and white light forward and light on flag-staff aft; had a lookout as we approached the Gate. He was on the bow, forward of pilot-house. His name was Edmund Davis; got to the gate about 5½ a. m.; that was about strength of flood tide. The night was very pleasant; full moon evening before, about 1½ hour high; clear. As we approached Gate I was at middle window of pilot-house, in command—front window; three windows in front and windows on side; pilot-house is square; clear lookout all sides. From pilot-house forward to stem is about 40 feet; went at usual speed till came near Gate—about twelve miles an hour. As we approached Gate, and were off Negro Point Bluff, we were nighest to Long Island shore than to Ward Island shore, and about in middle of true tide. We went past Negro Point bluff in middle of true tide. First intimation I had of Vim was I saw her; had just past asylum, so I could see across Negro Point, and saw the Vim about abreast of Flood Rock; saw it was a tow coming to meet me. When I saw her I gave her one blast of whistle. She answered with one blast. That was all the whistling that was done aboard of me, and all I heard. The Galatea did not give a second whistle. I did not hear the tug give a second whistle. When I whistled my helm was midships; went on without moving my helm till I got to Negro Point; that carried us in true tide. When I got to point I put wheel hard aport, and hauled up around point to south of it, as close as I dared go. There are rocks there to prevent going closer—rocks to south and west of the point. I observed the tow come by Hallett's Point, and come directly over towards Hog's Back, till she got

near over to the Hog's Back. Then she headed aroun
then to the south. I should judge that he put his w
drifted with the tide. She was drifting right at us, as near as I could judge. After I perceived she was coming at us I stopped the engine for, perhaps, half a minute or so. The tug then was nearing us very fast, and I gave two bells to back the engine, and the engine did back. As we commenced to back the bow of the steamer fell off to the southward. The tow was then heading E. S. E., and she drifted right down against our bow—across our bow.

(Marks place of collision on Chart X N; marks course of Galatea by dotted lines.)

41 I rang to slow three or four minutes after the whistle blowed. I could not have gone more to the right than I did, on account of the rocks on shore. I went to the extreme right of true tide. When I rang to slow the tug was half-a-mile off. The tow was then to S. and W. of Hallet's Point. When I rang to stop the tow was 500 or 600 feet from my stem. When I rang to back the tow was, perhaps, 200 feet off, drifting down on an angle to my stem; can't tell exactly. As she was coming, I could not have cleared her to the right. I rang to slow—to go easy. When I got around the point I rang to stop, because I had no chance to go to the northward; rang to back to keep clear; actually backed before collision; tide swung off our bow to S. and E. about four points before collision; tide struck our starboard bow. The two port-boats on the tow struck us on our starboard bow, abaft our stem. Those two sank; don't think we hit the third boat. They collided at near a right angle. When we began to back we slewed around; collision slewed us further, and our stern hit on rocks on point. I felt her hit; jarred the boat. If, instead of stopping and backing, I had gone on, I could not have passed to right; had not room, because tug went so far to north shore. There were rocks there. Immediately after collision I let Galatea drift back head to E. till I got to where I could turn—to North Brother. As we came back did not see Vim or tow; came back in three quarters of an hour.

MAY 24, 1871.

In turning Negro Point, I put my helm hard a-port, and kept it so, I think, till after collision; kept it hard a-port while backing; got backway before collision; backward movement carried us in towards the point; with tide half flood, coming west, the Galatea can go through main ship-channel on chart, and not through either of the other two channels; cannot go safely over Frying Pan; we go to south of

42 Frying Pan. When we first saw the Vim and tow they were coming with tide for the Hog's Back, till they got into tide that comes out back of Mill Rock—northerly side of Mill Rock; that brought them to northern edge of true tide; I observed change of heading of tug and tow; their bows slewed around to starboard, heading E. S. E., and they drifted down to us broadside; they continued to head E. S. E.; they moved about east with the tide; they came to us sideways, on an angle; they continued to move in that way until the collision; I could not perceive that they moved over to south side of true tide from north side of true tide; my boat was heading about S. S. W. when we struck; no second whistle on either side; we did not come in from behind Negro Point across the tide; my bow first began to slew immediately after we stopped. We were drifting in tide, in thick fog, off Tenth street, and touched bottom. I gave bells to start ahead, and we started ahead, and struck and broke one blade out of four in the propeller. This injury had no effect on

her motive-power or her steering power; she went to Providence and returned after that. She minded her helm as usual. After collision we had her docked. I examined her on the dock; not much amiss any way; shoe on her keel aft somewhat bruised; put on a piece twenty feet long and eight inches thick; shoe of wood, iron over it; iron had been bent some; had it straightened; two or three graving-pieces put in along keel, where it had dragged on bottom, and a small piece of plank put in on starboard-bow, about four feet from water; no stern-iron on her, none taken off; if scratched on her port bow, it was made by anchor; nothing out of the way in the bearing in which her rudder rested; know of no opening or bursting in that; Delamater, Thirteenth street, made these repairs in iron-work; Poillon did shipwrighting; steering-gear not altered since collision; never developed any defect.

Cross-examined:

43 Engine is 800 horse-power; cylinders 44 inches; 2 cylinders; 3 feet stroke; we are allowed to carry 35 pounds of steam; top of guards to water-line at bow is 12 feet and 10 amidships; she is a propeller; screw has four blades; on this trip one was broken off; in backing it turns from left to right. I was in pilot-house, 25 or 30 feet from stem of Galatea; flush-deck from pilot-house to stem; pilot-house is raised up; the guards are below that deck; pilot-house is two feet above that deck; railing around deck in front of pilot-house about three feet high; it is open rail; in pilot-house at collision; four men at wheel; they had been there from North Brother; names, Captain Edmund Torrey, George F. Nye, William Scudder, and Franklin P. West; Scudder and West do not now belong to Galatea; West left a week ago; Scudder a good while before; I went into pilot-house at Sand's Point; five in pilot-house; two at wheel before North Brother, viz, G. F. Nye and a wheel-man; when passed Two Brothers, Second Engineer Burns was on duty; when passed Two Brothers, going usual rate, 12 knots an hour; Two Brothers are nearly a mile to east of Negro Point bluff; passed Two Brothers about 5¼ a. m.; collision was 5½; Negro Point bluff to Negro Point is 700 or 800 feet; injuries on reef was trip we went out, from which we were returning at collision; don't remember I was directed at Providence to dock vessel on return; reported accident on reef in Providence; reported to president in Providence; think I received no directions from him; struck reef off Tenth street; in Providence I examined propeller and saw one blade gone; did not then see shoe bent; could not look; it was 14 feet under water; on dry-dock here found shoe broke up and iron around shoe bent; it was taken off and straightened, and replaced; shoe is piece of wood under keel that comes out under rudder, aft, and helps support rudder, and passes under propeller-wheel; shoe is four inches from lower blade of propeller; iron goes around shoe and goes along
44 main keel six feet, and goes to rudder; the iron covering and shoe are attached to an iron rudder-post; the Galatea was on dock, making these repairs, two nights; repairs all made on dock; iron around shoe could be bent without shoe being broken. We had just opened by Negro bluff when we saw tug over Hallett's Point; can't say if she was reported; think I saw her myself; five or six minutes to collision from time we were off Negro Point bluff; N on chart represents position of Galatea at collision; No. 1 is position of tow just before collision.

(Witness makes on chart a new pencil straight line for course of Galatea.)

Boats came together nearly at right angle. I did not leave pilot-house at collision, remained there; first signal I gave was one long blast of a

near over to the Hog's Back. Then she headed around to the east, and then to the south. I should judge that he put his wheel a-port. She drifted with the tide. She was drifting right at us, as near as I could judge. After I perceived she was coming at us I stopped the engine for, perhaps, half a minute or so. The tug then was nearing us very fast, and I gave two bells to back the engine, and the engine did back. As we commenced to back the bow of the steamer fell off to the southward. The tow was then heading E. S. E., and she drifted right down against our bow—across our bow.

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MAY 24, 1871.

In turning Negro Point, I put my helm hard a-port, and kept it so, I think, till after collision; kept it hard a-port while backing; got backway before collision; backward movement carried us in towards the point; with tide half flood, coming west, the Galatea can go through main ship-channel on chart, and not through either of the other two channels; cannot go safely over Frying Pan; we go to south of

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her motive-power or her steering power; she went to Providence and returned after that. She minded her helm as usual. After collision we had her docked. I examined her on the dock; not much amiss any way; shoe on her keel aft somewhat bruised; put on a piece twenty feet long and eight inches thick; shoe of wood, iron over it; iron had been bent some; had it straightened; two or three graving-pieces put in along keel, where it had dragged on bottom, and a small piece of plank put in on starboard-bow, about four feet from water; no stern-iron on her, none taken off; if scratched on her port bow, it was made by anchor; nothing out of the way in the bearing in which her rudder rested; know of no opening or bursting in that; Delamater, Thirteenth street, made these repairs in iron-work; Poillon did shipwrighting; steering-gear not altered since collision; never developed any defect.

Cross-examined:

43 Engine is 800 horse-power; cylinders 44 inches; 2 cylinders; 3 feet stroke; we are allowed to carry 35 pounds of steam; top of guards to water-line at bow is 12 feet and 10 amidships; she is a propeller; screw has four blades; on this trip one was broken off; in backing it turns from left to right. I was in pilot-house, 25 or 30 feet from stem of Galatea; flush-deck from pilot-house to stem; pilot-house is raised up; the guards are below that deck; pilot-house is two feet above that deck; railing around deck in front of pilot-house about three feet high; it is open rail; in pilot-house at collision; four men at wheel; they had been there from North Brother; names, Captain Edmund Torrey, George F. Nye, William Scudder, and Franklin P. West; Scudder and West do not now belong to Galatea; West left a week ago; Scudder a good while before; I went into pilot-house at Sand's Point; five in pilot-house; two at wheel before North Brother, viz, G. F. Nye and a wheel-man; when passed Two Brothers, Second Engineer Burns was on duty; when passed Two Brothers, going usual rate, 12 knots an hour; Two Brothers are nearly a mile to east of Negro Point bluff; passed Two Brothers about 5¼ a. m.; collision was 5½; Negro Point bluff to Negro Point is 700 or 800 feet; injuries on reef was trip we went out, from which we were returning at collision; don't remember I was directed at Providence to dock vessel on return; reported accident on reef in Providence; reported to president in Providence; think I received no directions from him; struck reef off Tenth street; in Providence I examined propeller and saw one blade gone; did not then see shoe bent; could not look; it was 14 feet under water; on dry-dock here found shoe broke up and iron around shoe bent; it was taken off and straightened, and replaced; shoe is piece of wood under keel that comes out under rudder, aft, and helps support rudder, and passes under propeller-wheel; shoe is four inches from lower blade of propeller; iron goes around shoe and goes along
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(Witness makes on chart a new pencil straight line for course of Galatea.)

Boats came together nearly at right angle. I did not leave pilot-house at collision, remained there; first signal I gave was one long blast of a

whistle at Negro Point bluff, then the tug was to west of Hallett's Point, nearly abreast of Flood Rock.

(Marks on chart B where Vim was when he first saw her.)

After we blew whistle, the next thing we did after we got up towards Negro Point, was to port our wheel. When we ported our wheel we were on chart at about opposite 71 at P; next thing we did was to ring to stop; I was in the pilot-house; the Galatea was, when I rang to stop, very near to N—not half length off of our vessel from it; after ringing to stop, next thing was two bells to back; she was then very near in same place; minute or two or so between bell to stop and bell to back—very near a minute, perhaps not more than half a minute; we were going very slow, against tide; not going by land any—holding against tide; no bell to slow before reaching Negro Point Bluff; injuries were occasioned by striking reef.

Redirect:

45 Bend in shoe-iron was in after part of it; don't think I saw it when it was taken off; no break in shoe; it was firm on keel when taken off; examined her stem on dock; no marks on stem; stems of two port boats of tow struck us on starboard bow, about where plank was broke, four feet from stem.

SETH DARLING sworn:

Reside in Providence; passenger on Galatea this trip; profession is engineering, piloting, and captain; have been pilot; followed water at fourteen years old; been through Hell Gate in charge of steamboat as captain often; familiar with localities there; did not turn in that night; heard whistle of Galatea; heard bell to slow; went forward on deck; pilot-house three feet above me; rail open around deck; nothing to obstruct view; when I went forward the Galatea was right off Negro Cove Point, now called Negro Point; she was then right in true tide coming down; could not tell if she had ported; I looked forward, saw tug and barges; she had just then passed Hog's Back; took Mill Rock tide, and that brought her abreast of Hog's Back; she was then on north side of true tide; they were pointing about E. S. E., coming down on an angle; they moved but very little; tide brought them down; engine moving very slow; they came down angling. The Galatea, after she had rung her bell, and her stopping-bell, and two bells to back, and began to back, that swung her off very little to the southward; they struck Galatea on starboard bow; I was looking over rail; the stem of the extreme port barge hit the starboard bow of Galatea about four to six feet back of stem of Galatea, and stem of Galatea hit port bow of first barge on port side of tug, six or eight feet back of stem of that barge. When the extreme port boat struck the Galatea it stove bow of barge in; water went in. As it went in bow settled down and coal spilled out forward, and she turned bottom up by her stern.

46 Stem of Galatea broke into boat on port side of tug, and she filled and sunk; tug not hit by Galatea; barge on starboard side of tug not hit by Galatea; saw her four feet off from tug going off with the tide. I saw no one on barges or tug; could not tell if port barges cast loose before they struck. When bell rang to stop on Galatea I came out and went to rail; if Galatea had not rung to stop she would have struck them about two-thirds of way aft on them, on port side of port barge. Point of collision was about two-thirds of way across to north side of true tide; if tug had gone ahead in direction she was pointing she would have cleared the Galatea. Up to time Galatea

rang to stop she could not have gone more to right; as she headed when I came out, she could not have headed more to right, without going in contact with rocks. The Galatea had just about stopped her headway, and backed a little, because she slewed her head to south, and her stern was shoved in to Negro Cove Point; she went in so I felt her touch the shore, she still backing; she went back with her bow pointing S. or S. E. to North Brothers before she could turn. Had been on Galatea before; she came from Providence that trip steering well; she was on time that trip; collision was at N on chart.

Cross-examined:

Not in employment of this line; was a passenger; had not gone to bed; acquainted with engineer and deck-watchman on upper forward deck. Passed the night sitting by stove or walking about saloon; collision was 5¾ by Providence time, 11 minutes faster than New York time; had looked at watch 5 minutes before; from where I stood to water-line was 15, 16, or 18 feet; when I went out to rail tow was 200 feet off; bow of barge next to tug, on port side, was 6 to 8 feet ahead of bow of other barge on port side; saw man overboard, hallooing for help; saw right-hand barge away from tug; arrow on chart is position of tow when I first saw her 200 feet off from Galatea; place of collision X just to west of Pot Rock where black dot is. Wind was N. E.

MAY 25, 1871.

EDMUND DAVIS sworn:

47 Bow-watchman on Galatea; been so for six years next November was so night of this collision; had been at bow all night; was on lookout as we approached Gate; was at my place at bow when we came to Brothers; when we approached Gate I was forward of cross-rail and 10 or 15 feet abaft of stem. I know Darling, who testified yesterday; he came over rail and stood by me; we came along nearer Long Island shore than the other shore—nearer to Long Island shore than to Ward's Island; when I first saw the tow I was up by the Negro Point bluff, off the bluff; saw tow over land; judged her to be up off Flood Rock. I saw her red port-light; we came up around Negro Point and struck true tide, the ship-channel tide that comes down by Hog's Back; I don't know tides off Negro Point; can't tell where we did strike that tide; I can't say how we headed or how wheel was; I saw tow go across toward Hog's Back and head off, but she did not appear to go ahead towards south, but drifted along with tide; I did not perceive that she moved forward in the way she headed; she drifted down in an angling position, her broadside and quarter, three-fourths of her, was visible to view as she drifted off them on port side; can't hear our bells forward; the Galatea kept to northern edge of tide coming by Negro Point; don't know depth of water at Negro Point, or what obstructions there are there. I noticed that the Galatea stopped; when the Galatea stopped the tow was some distance off, drifting down towards us; as we stopped our head drifted to the southward, swung by action of the tide; looked over our starboard bow a little to see tow; before Galatea's bow began to swing I saw tow right ahead. I think if Galatea had not stopped she would have hit tow on port side abaft midships. Galatea had swung 3 points or more before struck. I remained about 15 feet back of bow; saw vessels come together. I was on starboard side, looking over rail, 15 feet back of stem; Mr. Darling stood at my left hand, nearer

48 stem than I did, the outside port barge struck our starboard bow abaft our stem, 4 or 5 feet abaft our stem; the inside port barge

came across our bow 10 or 12 feet, that is, our stem hit her port bow 10 or 12 feet abaft her stem; don't remember touching tug or starboard barge; saw that barge drifting away from tug; bow of outside port barge sank, coal spilled up, and she turned summersault by way of the stem, bottom up; after port barges struck they let go lines of tows on both sides. I saw men on after part of both port and starboard side of tug letting go lines; I did not see head-lines let go; saw starboard barge going off; the stems of two port barges did not look even the inside one next to tug looked as if forward of the other.

Cross-examined.

I was about off Negro Point bluff when I first saw tug; we were nearest to Long Island shore, judging by distance from land; I heard but one whistle from each boat; one from Galatea first, and the tug answered; heard no whistle before that from Galatea; tug then, I should judge, about off Flood Rock, to south of Flood Rock; she looked nigher Flood Rock than to Astoria shore. I think I reported the light; I said there was a light ahead; did not describe the color; but the light I saw was port light; think there was a reply from pilot-house; no one on bow with me when I reported; when I reported I was ten or fifteen feet abaft stem on starboard side of boat, forward of cross-rail; Darling came out a minute or two after that; we were drawing towards Negro Point when Darling came out; he remarked that he thought that tow would come into us; they did not come into us before he had finished making that remark; might have been three minutes or less after; did not change my position till she came into us; can't say whether she stopped before or after Darling came out; as soon as she stopped her head dropped off to port quickly; she was backing, and as she backed her head fell off more; when she had swung most her stern was to-
49 wards Ward's Island; she was across the tide; she was going back and swinging across tide when they came together; at collision her stern was in eddy and bow in tide-way, her bow swinging around and her stern going towards Ward's Island; eddy is near point; kept looking at tow and watching her after she crossed to Hog's Back; she was in channel outside of Hog's Back; can't tell how near she was to Pot Rock at that time; can't tell how near to Pot Rock collision occurred; can't say how tow headed by compass when she came quartering or how steamer then headed. I saw tow coming angling before we stopped; her port side towards us; she appeared to be heading to southward; the tug got away from the boats before the port boat turned the summersault; she was eighty or ninety feet off when she spilt her coal and sank.

Redirect:

Galatea was not across tide till she stopped. The Galatea had head light and colored lights and stern light.

ABRAHAM TORREY sworn:

First pilot of Galatea at collision; not on her now; left her last fall; been a pilot on those boats five years; familiar with tides and lands and water in Hell Gate; been on Galatea two years before collision; was in pilot-house; had been there twenty minutes; called at Throg's Point; *on foe* the quartermasters went to pilot-house with me; found second pilot, one quartermaster, and Captain Nye in pilot-house; all five remained in pilot-house till after collision; we came along in about middle of true tide and about middle of channel; channel 400 to 500 feet wide at Negro Point bluff and from there to Negro Point; it is wider at

Negro Point; between Negro Point and Pot Rock channel is 500 feet, and is wider from that; I saw tug first off Hallett's Point; we were between the bluff and Negro Point; I saw it coming; two pilots and two quartermasters had wheel; I was on starboard side forward; 50 second pilot forward port; one wheel-man on east side of after wheel; heard whistle from Galatea first; Captain Nye blew it; saw tow before he whistled; she was near Hallett's Point, between Flood Rock and Hallett's Point somewhere; before we came to Negro Point we saw her off our starboard bow; when I came into pilot-house wheel of Galatea was midships; it was nearly midships at Negro Bluff; as we came up to Negro Point we hove it to port; I did it; put it hard over; to port; put it to port as soon as we could clear the point; between figures 71 and 85 on chart, and about opposite word "rocks"; kept it hard aport till we struck; we came right around in true tide; collision was at about the word "no" on chart; shut-off bell was rung just before got to point; after that bell to stop; we were then heading up by point; after that two bells to back, and then a single bell; I should think we had got backway on before collision; Captain Nye pulled the bells; single bell was before we struck; that was to back her strong; before collision I observed our vessel's head swing, caused by backing and tide; it began to swing as soon as we began to back; it swung off four or five points before collision; back motion carried her stern in to shore; stern got near enough to shore to strike; I felt it; the tow went in the true tide till they struck Mill Rock tide, and that turned them, and they came towards us; after they struck Mill Rock tide they were on north side the channel; from there till they struck they pointed about S. S. E. by compass, across our bow; could not see they made headway in direction they pointed; they drifted side to place of collision; port side of port barge towards us; from time Galatea ported she kept at north edge of true tide; she could not have gone a great deal more to right because of rocks. I think we would have struck if we had not stopped; would have struck port side of tow midships or aft. I think one barge went by our stem and one struck us on our starboard bow, five or six feet back of stem; all I could see was two 51 of them sunk; saw starboard barge free from tug. I heard no second whistle from either vessel; no second whistle by Galatea. After collision we backed and struck back of Negro Point; we backed and filled till we got headed to east, so we could go up east far enough to turn and head west; that was the only way to get around with vessel of her size. I saw slivers in bow of Galatea about four feet from water-line and five or six feet from stem on starboard side, at place where afterwards a new plank was put in; got aground day before at Tenth street; lost one fluke of wheel. What happened to her then did not affect or impair her steering-power or propelling power; made a little more jar; saw Galatea on dry-dock; keel bruised; one fluke of wheel gone; shoe-iron was on; did not examine bend; she steered and sailed as well as usual coming back from Providence; no displacement of rudder-post or rudder; could tell if out of order by handling; it was not.

Cross-examined:

I was called at Throg's Point about 5 o'clock; left Providence 5 p. m. Providence to Throg's Point about 150 miles. No signal to engine-room before whistle blown. Galatea 245 feet long over all. I saw tow after we opened by Negro Bluff; saw green and red lights. They were off our starboard bow; bore a little north of west. At that time we were going about southwest. We hauled up around Negro Point to west,

and a little to north of west. Did not keep green and red lights in view till collision; port-light was in sight all the time, open all the time; red light in port side till collision. When she got to Hog's Back and hauled out I lost green light. First we whistled; they replied by one whistle. Then we slowed; then we ported, ported hard a-port; then stopped and backed. Don't think we began to swing to south till we began to back; don't think the stopping caused the swinging.

GEORGE H. REYNOLDS sworn:

52 Constructing-engineer; construction of steamships; employed in Delamater Iron Works; make plans; understand machinery; know Galatea's screw, four flukes; breaking off one fluke would make no difference except in jar.

JEREMIAH MULFORD sworn:

Superintendent in Delamater Iron Works; know the Galatea; knew her before December, 1869; saw her on dry-dock in December, 1869, after she grounded in East River. She had one blade broke off wheel; keel-plates bent; one cracked near stern-post and the other one bent. They are wrought-iron, 6 inches wide and 1¼ inch thick and 5 feet long. Both were bent, bent 2 or 3 inches. They are ⌋-shaped. Crack was on horizontal part. The crack was all way through thickness and half through width, beginning at top; bending was from port side to starboard; no looseness of steering apparatus; not affecting steering or propelling power.

Cross-examined:

Timber between plates was broken at crack; crack was in plate on port side.

GEORGE H. REYNOLDS recalled:

Heard Mulford's testimony. The injuries would have no effect on steering power of Galatea.

(Makes Diagram R of arrangement of Galatea.)

GEORGE F. NYE sworn:

Age, twenty-nine; second pilot of Galatea at collision; my father was master; been pilot on Sound about nine years; been on Galatea nearly three years; familiar with Hell Gate, and water and land there; been through there daily. I had been in pilot-house from twelve o'clock till first pilot came after Sands Point, with West, quartermaster; no slowing before we reached Negro Point Bluff. As we came along Negro

53 Point Bluff we were in true tide, nearly midway of channel, with wheel midships. I saw tow coming. We were about abreast of Negro Bluff; saw her as we opened by the bluff. Bluff is forty feet high. At that time tow was between Flood Rock and Hallett's Point; she was off our starboard bow one or two points. I saw her red light; that is all I remember seeing. We blowed one whistle; then we ran along and rang to slow; soon after we rang to stop. Before the collision we rang to back; single bell was pulled after that. Our wheel was hove hard a-port soon after whistle was blown, and before bells were rung for whistle from tug, after that our wheel was put hard a-port. We turned Negro Point on north edge of true tide; from Negro Bluff we kept in true tide. I heard Captain Brainerd's testimony. He is not correct as to Galatea shooting across tide. I was on port side of wheel; four men at wheel; engine stopped and backed; got back-way on

before collision. Head of Galatea began to fall off when we began to back; did not fall off by stopping. Fell off about two points before collision. Back-way carried her stern in towards land and back at same time, and she went bodily with tide. Tow went towards Hog's Back, and then turned and headed to south and east; appeared to be drifting sideways; did not go ahead. I judge the heading south and east was by her porting her helm. She did not move forward in the direction she pointed at all before the collision; she came down sideways, in north part point of true tide. I observed when we stopped, if we had not stopped, we should have gone through the whole of them; if we had not backed, should have hit her midships. I felt collision; saw tug-boat sink; saw tug back clear, and one canal-boat going towards cove. Galatea could not have gone further towards the point; she continued backing till we touched bottom. East of Negro Point I found no difficulty in steering her.

Cross-examined:

54 We were heading S. W. by W. till we began to back; tow was then 300 feet off; we were on port helm swinging to starboard till we began to back; till then tow was nearly ahead and a little to starboard; backing threw our bow to port two or three points; after we swung a point to port tide acted on starboard bow, and backing acted to throw her still more to port; while we were stopped the tow headed to S. and E.; the tow did not draw across our bow any; we were swinging to port; we would have been heading about W., to strike her amidships, she heading S. and E.

ABRAHAM TORREY recalled:

After Galatea stopped, if she had not backed, there would have been a collision; would have hit her more on the side; we did not come out by Negro Point and shoot across tide.

Cross-examined:

When we began to back, the tow was 200 feet off; at that time, tow was nearly ahead of us.

WILLIAM L. SCUDDER sworn:

Followed sea about nine years; was quartermaster on Galatea at collision; had been at wheel from 3 o'clock; had hold of wheel at Negro Bluff; wheel there was about midships; no slowing; rounded bluff; saw tow little off starboard bow; took her to be abreast of Flood Rock; did not notice her lights; captain and two pilots and other quartermaster were in pilot-house; we blew one whistle, and she gave one whistle; then one bell to slow; then, after we got most to Negro Point, wheel was hove hard aport, and kept so till collision; abreast of Negro Point bell rung to stop, then two more bells to back, and then a single bell; those bells were obeyed, as I judged by the motion. When we passed bluff, we were, if anything, nearer Long Island shore. We came about with true tide. We did not shoot across tide; we could not have gone nearer to Negro Point than we did. We have touched off the point. Our 55 head did not begin to swing to south before we began to back. Our head fell off three or four points. I saw tow till collision. She went over to Hog's Back with tide till she struck Mill Rock tide, and then came down with that in centre of true tide, if anything, north of middle. She pointed about S. E. or E.S.E., at angle of 45 degrees. I judged from port helm. She came angling towards us; not exactly

broadside; did not observe her make any progress to south part of tide. If we had not stopped, I think we would have struck port side of port barges a little aft of midships. After we stopped, if we had not backed, I think we would have struck her a little further aft than we did. We got some backway on before collision; that moved our stern towards land, we drifting with the tide. We touched after collision while backing east of Negro Point. Collision was at 1 of No. 1 on chart.

Cross-examined:

When we stopped we headed west if anything, north of west; when we stopped, tow was 400 or 500 yards off—nearly ahead—backing threw our bow to port; tow was 150 yards off when we began to back.

MAY 26TH, 1871.

FRANCIS M. WEST sworn:

Was a quartermaster on Galatea at collision; was at wheel; entered pilot-house about twenty minutes before collision off Fort Schuyler; followed sea nine or ten years; on Sound most of time; I was at after end of wheel, on port side, behind second pilot, abreast of Negro Point Bluff, we were about middle of stream in tide; when I first saw the tow, the Galatea was about opening out from Negro Point Bluff; she bore a little on starboard bow; noticed her red and green lights; I took her to be to south and west of Hallett's Point, between that and Flood Rock;
56 when we opened by bluff, we rang one bell to slow down; as we approached Negro Point we rang another bell to stop her; then we rang two more bells to back before they struck, and a single bell to back her strong; we blew one long blast off bluff; it was answered; we blew whistle; I got answer before we stopped; we ported our wheel off Negro Point to go to right; we came in true tide from around point to place of collision; when we stopped we were on north edge of true tide; I saw tow when Galatea stopped; I think if we had not stopped we would have hit port boat about midship; if we had not backed we would have hit her port boat near midships; I observed no change in position of Galatea before she backed; after she began backing, her head fell off three or four points to south, her stern moved towards Ward's Island, and she was swinging off with tide; I first observed tow coming up by Hallett's Point; I did not then see both her lights; saw them both after she got to east of point; she drifted down to Hog's Back; when she got nearest to Hog's Back she was in north part of true tide; from there, as tow came down, it pointed to south and east; it did not seem to make headway in direction it pointed; it moved angling toward's Hog's Back; the last I saw of tow she was 150 feet off, still angling towards us; after collision I saw tug backing out with one of the boats.

Cross-examined:

We ported hard aport off Negro Point; the tow was then half-way from Hallett's Point to Negro Point; she was still in true tide; we ported to go to right; when we ported the tow was at A; we slowed before we ported; when we slowed our wheel was midships; when tow was at A, the Galatea was to north of Pot Rock at No. 1; after we ported hard aport, the order was given to stop; when we stopped we were heading pretty near in true tide; we were a little to north of centre of true tide; bells to back came very near after bell to stop; when
57 we stopped tow was about 150 to 200 feet off; she was coming for us—drifting bodily towards us—but pointing to south; when we began backing, that slewed our bow to south towards Long

Island and stern towards Ward's Island. We struck east of Negro Point, at 19.

JAMES H. HATFIELD sworn:

Was first officer of Galatea; followed sea twenty-three years. Been officer of steamer since 1861; on Sound about six years. Was on Galatea at collision. I was on watch on main-deck from 3 a. m. to North Brothers. I came out on forward-deck when whistle was blown by Galatea. Went forward to cross-rail at side-rail. Davis was there, forward of cross-rail; ten feet forward of cross-rail, aft side of capstan. When I came out we were opening by Negro Bluff. The Galatea was in tide-way, on north side of tide, rather nearer Long Island shore. From time we opened by bluff our course was little to west of southwest, about west-southwest. From time whistle was blown on north edge of tide, I could perceive a difference in motion from about time whistle was blown as though slowing. A little more than half way from bluff to point, or rather more on turn of point, she was stopped. On east point of the turn we were then in tide-way, gradually drawing around Negro Point to westward; collision was at N. Before vessel struck, head of Galatea fell off not more than one and a half to two points. At collision I could see Galatea was sagging with tide by land; point of collision was on north and east side of true tide. I saw tow before I got to corner; took her to be between Flood Rock and Hallett's Point, a little to northwest of Hallett's Point; kept looking at her. She headed partly across tide and partly before tide. She moved bodily with tide, not broadside, and not end on; at angle. If we had not stopped we would have struck tow aft of her midships, on port side. If we had not backed we would have hit her little forward of midships. We did not come out from under Negro Point and shoot across tide. On starboard side of bow, about six
58 feet from outboard edge of stem, parts of three new planks were put in; that was all there was fixed above water; shoe put on keel, forward. The tow of extreme port barge hit bow of Galatea; drove parts of barge's deck-plank through plank of Galatea and into her timbers; saw one boat sink.

Cross-examined:

When I first saw tow she was between forty-four and thirty-three on chart, little to eastward, off Hallett's Point. I saw no lights on her that I can remember.

ANDREW M. DOUGLASS sworn:

Chief engineer of Galatea; was so at collision; had been so about seven years; she is about 800 horse-power; at collision her engine good, except broken blade of propeller-wheel. I was in bed at collision; had been so since one o'clock.

GEORGE BYRNE sworn:

First assistant engineer of Galatea at collision; was first assistant engineer of Thetis at time; had been there from September on Galatea; Thetis was laid up; I was in charge at collision; an oiler was in engine-room with me. I sat in front of engine when I got first bell; had been in engine-room from one o'clock. I had twenty-five or twenty-six pounds of steam on to go through Gate on head-tide; had carried fifteen all night; got bell to slow; slowed; took off cut-off, and throttled her, too;

gave full stroke; then got another bell; stopped; then got two bells to back, and single bell; obeyed them all; the oiler helped me work; did not feel jar of collision; backed till I felt she had touched.

STEPHEN D. HORTON sworn:

Hell Gate pilot, licensed; been so thirty-four years; know about Hell Gate; width of tide where vessels go between Pot Rock and Negro Point is about 300 feet; have had experience in handling tows in all
59 shapes; Vim, with three heavy coal-barges, two on port side and one on starboard, 110 feet long, and seventy pounds of steam.

(Question ruled out.)

Mr. Choate for claimants; Mr. T. C. T. Buckley and Mr. E. H. Owen for libellants.

C. A. V.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Wednesday the fourteenth day of June, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the Hon. Samuel Blatchford, district judge.

FREDERICK ROBERT ET ALS.
vs.
THE STEAM-PROPELLER GALATEA, HER tackle, &c. } 23–212.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the several libellants recover in this action against the steam-propeller Galatea, her tackle, &c., the damages by them sustained by reason of the collision in the libel set forth, with their costs to be taxed; and that it be referred to a commissioner of this court to ascertain the amount of such damages
60 due to said libellants severally, and report thereon to this court with all convenient speed.

SAML. BLATCHFORD.

U. S. district court, southern district of New York.

FREDERICK ROBERTS ET ALS.
vs.
THE STEAM-PROPELLER GALATEA, HER tackle, &c. } Reference on decree to ascertain damages.

Platt, Gerard & Buckley for libellants; Evarts, Southmayd & Choate for claimants.

1871, OCTOBER, 24.

Adjourned to 28th inst., 12 m.

OCTOBER 28TH.—Libellants call—

HENRY W. BENEDICT, sworn:

Am a coal-dealer at New Haven, Conn.; have been in coal business thirty to forty years; my firm is H. W. Benedict & Co.; our firm in December, 1869, were owners of coal on board the barges Pottsville

and Reading; that coal came from Elizabethport, N. J.; we had bought it—all but $105\frac{5}{20}$ tons—we bought from the Delaware, Lackawan'a & Western R. R. Co.

Q. How much coal had you on board?

(Objected to, as witness is not shown to have knowledge; objection overruled; exception.)

A. On the Reading, $329\frac{2}{20}$ tons; on the Pottsville, 272 tons. These are the bills of lading.

61 (Exhibits 1, 2, and 3 offered in evidence; admitted.)

We never received this coal; it was Scranton coal. Our firm had been in the habit a number of years of receiving coal of similar quality for *a number of years.*

Q. What was Scranton coal worth in New Haven?

(Objected to as immaterial; objection sustained.)

Q. What was it worth at Elizabethport at the time this coal was shipped?

A. It is extremely difficult to answer exactly, because the auction-sales occurred two weeks previous, and it generally advances after such sales. There are several different sizes of coal in the bills of lading. Grate-coal, I can swear positively, was then worth $5 a ton at Elizabethport. Chestnut, I can swear positively, was worth $4.25 per ton, and I honestly believe it was worth more. Lump coal I can swear was worth $4.25 per ton, and I honestly believe more. The above prices refer to coal delivered on board the vessels.

Cross-examined:

We bought all but $100\frac{5}{20}$ tons at the auction, direct from the company; that $100\frac{5}{20}$ tons was grate-size; was bought from Miles R. Martin, who had bought it at the auction-sale. We paid him $5 per ton for it, net cash. (Witness produces the bill.) We paid for the chestnut, $129\frac{12}{20}$ tons, at $4.22\frac{1}{2}$ per ton; for the grate, $99\frac{5}{20}$, at $4.30 per ton, at the auction; for the lump, 200 tons, at $4.27\frac{1}{2}$ per ton, and for 72 tons, $4.12\frac{1}{2}$. These were net cash prices at the sale. I can't say whether we made efforts to raise the coal. My partner, Mr. Pardee, had charge of such efforts, if any was made. I don't know whether it could have been raised, nor what it would have cost to have raised it. I don't know, nor have I heard, of any of the coal being raised or recovered. My coal was partially insured.

Q. For how much?

62 (Objected to; objection sustained; exception.)

Q. At what valuation was the coal insured?

(Objected to; objection sustained; exception.)

Q. Have you received anything for the coal that you refer to, from any persons or company?

(Objected to, except so far as showing payment or satisfaction by the claimants; objection sustained.)

A. The claimants have never given me anything.

Q. Have you made any assignment or transfer of your interest in this coal, or any part of it?

(Objected to; objection overruled.)

A. I have not.

Q. Have you received from your insurers compensation for a total loss?

(Objected to; objection sustained; exception.)

A. I did not see the coal put on board, nor while on board.

Redirect:

Q. What was to be the freight on this coal?

A. A dollar and twenty-five cents per ton—the same on all.

HENRY W. BENEDICT.

Subscribed and sworn to this 28th day of October, 1871, before me.

GEO. F. BETTS,
U. S. Comm.

DANIEL MCWILLIAMS, sworn:

I reside in Philadelphia; am a boatman and owner of boats. I am interested in seven. I was owner of the barge Hoffman in December, 1869; prior to that I had owned boats since 1855, and during that period of ownership I had bought and sold them. The Hoffman was what we call a river-barge or boat, calculated to carry 350 tons of coal or iron; through the canal she carried 250 tons. I don't think I saw her in December, 1869. I saw her in November, 1869; she was
63 carrying coal through the canal from Baltimore to New York in November and December, 1869. When I last saw her, in November, 1869, she was in first-rate condition. In December, 1869, I considered the Hoffman worth $4,500; she was not quite two years old.

Cross ex.:

I have never seen the Hoffman since November, 1869; I went up several times to the locality where I heard she was sunk. I had heard her deck was floating around. I couldn't see it. That is all the attempt I have made to recover her. I just merely went up and looked around. She was not quite two years old. I never knew any other vessel of that class and name. She was not rebuilt—she was new. At the time she was built she had no old timber nor plank put in her; she was new throughout. I can't give her dimensions. My impression is she was about or a little over 100 feet long, about 18 feet beam, about ten feet hold. I bought her of Mr. Henry Bumm, of Philadelphia. I had owned her a year when she sunk. At the time she sunk no one else but me had any interest in her.

Q. How much did you pay Mr. Bumm for her?

(Objected to; objection overruled.)

A. I can't tell exactly, because Hugh McFaddon owed me about $4,000. It had been a growing account. My boats were working for him. The boat was in McFaddon's name. Bumm owned the boat, I think. He offered to sell it to me for $3,500. We then got together. I was afraid McFaddon was going to burst, and I traded off my claim against McFaddon to the extent of $3,500 for the boat, and I retained the surplus claim against McFaddon. Bumm gave me the papers for the boat, and took my claim against McFaddon to the extent of $3,500 in payment. I had been suspicious for about a year that McFaddon would break. My boats had been working for him three or four years. At this time he owed me for nearly a year's work. She could not go through any canals but the Chesapeake and Delaware and the Dela-
ware and Raritan. Round bow, and stern round at bottom and
64 square at top; pointed bow; not what is called a scow; no masts nor rigging. She was decked and hatched. So far as I ever knew or heard, she had never met any accident nor collision prior to this affair. She was in better condition than vessels of her class after two years' use. She was kept in better order than they usually are. Van Duzen, of Philadelphia, I think, built her. Nobody else had used

her but Bumm and McFaddon. She was built with Delaware oak, with oak planking and a white-pine deck.

DANIEL McWILLIAMS.

Subscribed and sworn to this 28th day of October, 1871, before me.

GEO. F. BETTS,
U. S. Comm.

WILLIAM A. PEALL, sworn:

I reside in Philadelphia, am a shipwright; have been 25 years. In March, 1869, I knew the barges Pottsville and Reading. They were then owned by the Philadelphia & Reading Railroad Co. They were then carrying coal from Port Richmond, at Philadelphia, to New York and up the Sound. The Pottsville's carrying capacity was 235 tons, through the Delaware and Raritan Canal; the Reading's 255 to 258 tons.

Q. Describe the boats.

(Objected to as knowledge too remote; no foundation laid. Objection overruled.)

A. The Reading is about 105 feet on the keel; longer 3 or 4 feet on deck; about 22 feet 6 inches beam; 10 feet 9 inches hold; built of white oak and pine.

The Pottsville was 102 feet long on keel, 21 feet 6 inches beam, 9 feet six inches hold; built of white oak and pine. I did not build those boats. I did work on them from time to time.

Q. What would it have cost to have built those boats?

(Objected to; objection sustained.)

65 Q. What was their condition in March, 1869?

(Objected to; objection overruled.)

A. Very fair; I had fixed them up some during the winter. I think I am acquainted with the market of boats of that size and class in the fall of 1869. I had bought a number of boats for the Reading Co., as their superintendent, that fall; smaller boats for the trade from Port Richmond to New York.

Q. What, in your opinion, was the market value of boats of this size and description in the fall of 1869?

(Objected to, as not shown to have knowledge; objection overruled.)

A. I should judge the Reading was worth in the neighborhood of $2,800, and the Pottsville about $2,500.

Cross-examined:

I mean these vessels were worth these prices when we sold them in March, 1869. I don't think I saw them after March, 1869. I only know what they were worth after that from what I heard. The Reading Co. had these boats prior to my coming there in 1864. We used them to carry coal from Port Richmond to New York, and up the Sound. We had used them for that purpose 4 years while I was there—passing through the Delaware and Raritan Canal; one or two trips, to Baltimore. I know they were sold to Mr. Gladwish in March, 1869. I know the prices, but only by hearsay. I estimate the value of these vessels by the practical knowledge I have of their cost. I think it would have cost these prices to have built them at this time. I examined them all the time; went into their holds when they needed repairs—that was very seldom. I can't say how often they needed repairs during the four years—perhaps 10 or 20 times. These are the only two vessels

66 we sold at that time. We bought upwards of 20 in the spring of 1869—new boats. We didn't buy any old boats at that time; we never bought any old boats of this description. We never sold any but

these two. I also had knowledge of the market from others buying and selling; what they tell me they buy and sell for. I can't name any in the spring of 1869, or summer or fall of 1868, nor in 1867. In 1868–'9 they were repaired at the company's yard at Port Richmond—every barge is; they were only repaired for natural wear and tear.

Redirect:

Q. Did you mean to state, on your cross-examination, that the Pottsville and Reading could have been built in 1869 for the prices you have named?

A. No, sir; I did not.

Q. When you state, in your cross-examination, you "think it would have cost these prices to have built them," what did you mean to be understood?

A. That the boats at the time they were sold were worth those prices. I understood the question to refer to values at the time they were sold. They could not have been built in 1869 for $2,500 or $2,800, nor for twice the money.

(Objection to last clause as not responsive.)

Q. Was there any difference between the period of March, 1869, or November, 1869, as to the market value of that description of boats?

(Objected to as no foundation is laid; objection overruled.)

A. No; if anything, they would be worth more in March, as the navigation would be just beginning.

Q. Had the age of these boats anything to do with their sale?

67 A. No, sir.

Q. If you know, as superintendent, why they sold them, state.

(Objection; objection sustained.)

WM. A. PEALL.

Subscribed and sworn to this 28th day of October, 1871, before me.

GEORGE F. BETTS,
U. S. Commissioner.

Adjourned to November 4th, 10½ a. m.

Nov. 4th, adjourned to 11th inst., 12 m.

NOV. 11TH.—Libellants call—

WILLIAM E. GLADWISH, sworn:

I know the barges Pottsville and Reading. My business is towing and freighting with barges, between New York and ports on Long Island Sound; have been in that business six years. I have had a great deal to do with barges; running, repairing, and chartering them, but not much in buying and selling them. I was acquainted well with the ordinary prices of canal-boats and barges at the time of this collision. I can say that I was acquainted with the value of these two barges at that time. I knew these two barges well enough to give an idea of their value.

Q. At the time of collision, what was the market value of the Pottsville?

(Objected to, no foundation laid; objection overruled; exception.)

68 A. The Pottsville was worth, as she stood, $3,500. She was at this time in good condition, as good as she could be made. The market value of the Reading was, at the same time, $3,750.

(Same objection.)

She was then in good condition; had just been put in good condition,

and both were well found. The Vim's bow and towing lines on each side were worth $100 in all. I am the sole owner of the Vim. She was towing for hire. She lost her towage by this collision.

Q. What was the amount of towage lost?

(Objected to on the ground that the contract, if any, was in writing; overruled, as no evidence that it was in writing.)

A. Two hundred and eighty dollars. We were carrying the coal on the Pottsville and Reading for third parties on freight; we lost that freight. By Ex. 1 the freight on the Pottsville amounted to $340, and by Ex's 2 and 3, the freight on the Reading to $411.25.

(It is admitted that the amounts of coal stated in Ex's 1, 2, and 3 were on those barges respectively at the time of collision.)

Cross-examination:

Those bills of lading represent what we would actually have received if we had completed the voyage. We would have had to pay six cents a ton trimming, and twenty cents per ton discharging at New Haven. We would not have had to pay any brokerage; no return for cash to Benedict. We were not entitled to claim from Benedict, Hardy & Co. more than $1.25 per ton; we paid all our expenses out of that.
69 We could not recover from B. H. & Co. anything for the tug, nor pay any other persons for any portion of that coal carried by the Pottsville or Reading.

Q. What would be the cost of running the Vim per day?

(Objected to as immaterial; objection sustained.)

Q. What would be the value of the Vim at that time to charter per day?

A. About $60 per day, towing vessels of this description. We had a man and a boy on each canal-boat. At that time such canal-boats, manned, were chartered at about $7.50 per day. It would have taken about twenty hours to have gone from the place of collision to New Haven with the tow. Our tug had no specific instructions on this voyage what to do on her arrival at New Haven.

Q. What was her usual course of business?

A. She would have brought boats back light; whatever boats she might find; but I would not say that at that season there would be any barges for her to bring back; she might have come back without any tow. The barges which she might have towed back would have been barges which we had towed up, and they might have been full or empty. If barges of ours had been up there which had been discharged, we would have towed them down. The Pottsville and Reading were to discharge their cargoes at New Haven, and then, if they could not get a return freight, to come home light with the first tug we sent up there.

Q. How many times that year did your barges bring back a return-cargo from New Haven?

(Objected to; objection sustained; exception.)

Q. Did any of your canal-boats during that year take a return-cargo at New Haven and bring it to New York?

A. No boat of ours did from New Haven. These two had gone three times before in that year. The trip from New Haven to New York light would be eighteen hours with a tug. We had no written contract
70 to tow the Hoffman. I made an agreement to tow him, or some one in our office. I don't know of any specific agreement as to price with him. I can't tell the length of the towing-lines of the Vim. They were five and six inch Manilla rope; can't say how old they were. I had owned the Vim then three years. We had had to renew all

her lines, breast and towing, some three times a season. I should say these lines were each about twenty fathoms long. I value the Pottsville and Reading just as they were with their appointments. I bought them that same spring of the Philadelphia & Reading R. R. Co. I negotiated with D. T. Moore, their agent here, and with Thomas E. Richards, their superintendent at Port Richmond. I paid $1,500 apiece for them, in cash. I don't know their age. After we bought them we laid them up some time for repairs, and overhauling, and alterations, and then we used them. I had an offer for the Reading from a party at Rondout. I don't recollect his name. I couldn't describe him so as to find him. I never had an offer for either of them from any person whose name I can give; they were not in the market to sell. I did not own any other barge than these. I never purchased any other canal-boats prior to these. We had made offers for some, and have purchased others since.

Q. What do you think the market value of these boats was at the time you purchased them?

(Objected to; objection overruled; exception.)

A. I should think, in this market, $5,500 for the two to $6,000, in the condition they were.

Q. Can you give me any adequate reason why Moore sold them to you for $2,500 less their market value?

(Objection; objection sustained; exception.)

WM. E. GLADWISH.

Subscribed and sworn to this 11th day of November, 1871, before me.

GEO. F. BETTS,
U. S Commissioner.

71 FREDERICK ROBERT, sworn:

I am a partner of Mr. Gladwish. I have been in this business about five years. I knew the Pottsville and Reading at time of this collision. In the course of my business I have become acquainted with the value of barges. I have owned some; have bought some. I have investigated thoroughly into the cost of building them in all the ports from North Carolina to Maine, though I have never built. Prior to going into this business, and during the early years I was in it, I had an interest in eight lighters, which are a similar class of vessels. At the time of this collision the market value of the Pottsville was $3,250.

(Objected to, as foundation not laid; objection overruled; exception.)

The Reading, $3,600.

(Same objection.)

The towage for the three boats would have been 280; that was the usual and ordinary charge for such towage; it was our regular price. I should value the breast and towing lines on each side at $60 to $70 altogether. I think Gladwish has given the new value; that was their cost when new, about $100.

Cross-examination:

Of the $280, $100 each was to come out of the freight of Pottsville and Reading, and $80 to be paid by the Hoffman; the $200 was to be paid by ourselves to ourselves, credited on our books; the $200 was not to be paid us by anybody else; the $80 was to be paid us by the owners of the Hoffman. I made the contract with the captain verbally; he reported his boat to me to go to New Haven. He was to pay us $80; for this I was to take his boat to New Haven and back by one of our tugs.

I had no other interest in the Hoffman except in earning that $80 in that way. I don't know how old the lines were. I suppose they had been in use a couple of months. We use up a good many lines; we have
72 to keep them in good order. When we bought the Pottsville and Reading, I thought they were worth in the market $5,000. I think at the time of the collision the Reading was worth $1,100 more, and the Pottsville $750 more, because we had spent nearly that on them. We ran one trip with light cargo, and then we repaired them; then the Reading had her rudder broken—we gave her then a general overhauling. We did no more work on them of any consequence. A man in Rondout did some of the repairs, and Applegate, in Jersey City, did some. I think those are all that I remember. Neither of them met with any other accident. The accident to the Reading was that when she was light she struck a rock and broke her rudder-blade, and had to go on dock at Rondout. That was a small job. We spent more on the Reading than the Pottsville, because she was not in as good order; she needed caulking; her iron-work was loose; her hatches were out of order. I can't remember the details of the repairs we put on her. I think we have the bills of the repairs, but we have changed our office and I am not sure.

Q. What was done in that overhauling of the Reading?

A. I have given all the details I can. Some of her iron around her upper works had been loose, and I told the captain to have it made fast. I think one or two new pieces were put in her deck, but I wouldn't swear to it; her rudder was fixed; she was caulked deck and sides. That is all I recollect being done to her. The Pottsville had some joiner-work fixed in her house; had new bow iron; was caulked some; she had some of her ceiling fixed inside, I think, but am not positive. That is all I recollect while I owned her. We had both painted. The Rondout bill on the Reading did not vary $25 from $700. I am quite positive. I can't give the amount of bill on the Pottsville—half the Pottsville now lies in Bounty's Cove, Hell Gate. I don't know where the other half is; it was below Hunter's Point. The Reading lies in the Gate now, if there is anything left of her. I have investigated their condi-
73 tion, and have had it done. I have not raised and repaired them; they are now where they went immediately after the collision.

FRED'K ROBERT.

Subscribed and sworn to this 11th day of Nov., 1871, before me.

GEO. F. BETTS,
U. S. Comm'r.

Adjourned to October 15th, 2 p. m.

EDWARD WHITE, being duly examined as a witness on the part of the libellant, testifies that he was captain of the boat Reading at the time of the collision. I was on board at the time of the collision. The boat and everything on board of her sunk. I just got off with what I had on my back.

(What follows is objected to as not covered by the pleadings.)

I lost thirty dollars' worth of provisions at least; this I had bought myself, and it belonged to me. I lost a suit of clothes worth forty dollars, ($40.) I lost shirts and underclothing, I had used for working, I estimate at twenty-five dollars, ($25;) I don't think I could replace them for that; also a couple of pair of pants. One of rubber, another, a strong

pair. I estimate them at five dollars ($5) a pair. I lost seventeen dollars in money, which I had in my trunk. The trunk was lost, with its contents. I estimate the trunk at six dollars, ($6) it cost more. I lost a couple of cabin-lamps, I estimate worth five dollars, ($5;) I lost a rubber coat and cap. I estimate them at five dollars, ($5.) I had a looking-glass and pictures, and clock and saw, which were lost, worth ten dollars, ($10.) Total loss, one hundred and forty-eight dollars, ($148.) I also lost a heavy overcoat, worth twenty dollars, ($20.) Total, one hundred and sixty-eight dollars, ($168.)

74 Cross-examined:

All of of these belonged to me individually; never recovered any of them, nor saw them afterwards; don't know what became of them; they went down with theboat.

Redirect:

I had been on the Reading from about May of that year. I never owned a boat as big as that; I've owned a smaller one.

Q. How much was the Reading worth at that time?

(Objected to, on the ground that no foundation had been laid for the examination of the witness, examined entirely as to new matter not referred to in the direct or cross examination, and the testimony is irrelevant and immaterial.)

A. She was worth about four thousand dollars, ($4,000.) She was worth more for the trade.

Recross-examined:

Have had no conversation with Mr. Robert or Mr. Gladwish about this vessel; I mean to say I have exchanged no conversation with them about this vessel. I haven't been here. I don't work for them. I came here to prove my loss. My brother-in-law, who is in their employ, wrote to me that this was coming off. I saw Mr. Gladwish this morning about eleven o'clock, passing through his office. He has not spoken to me today; his clerk told me to come up here at three o'clock. I owned two boats, one in '61 and one in '63; one the Panpach, and E. White. I won't be sure of the date of '61; have not owned boats like that since. I own an interest in a boat now; I mean I am working an interest out in her; she belongs to the Delaware & Hudson Canal Company, and I hold the vessel under a lease.

I bought the Panpach in the spring of 1863. I gave her to my brother about September, 1863, when I quit boating. I cleared the E. White under my lease with the Pennsylvania Company; I did not buy
75 her outright. I don't know what Gladwish paid for the Reading. I never heard him say. I would have paid $4,000 for that vessel if I had had the money; that is, I calculate she was worth that. I do not know whether they could have got that for her or not. I mean that $4,000 is what I will swear she was worth, but I don't know what he could have got for her. I have stated all the vessels I ever owned. I paid $420 cash for the Panpach, and then I had to repair her. She could carry 140 or 145 tons. She was not over five or six years old when I bought her.

EDWARD WHITE.

Sworn to before me this 4th day of December, 1871.

JOHN J. KEHOE,
Notary Public, N. Y. Co.

JAMES MONK, being duly sworn for the libellants, testified:

I was captain of the Pottsville at the time of the collision. I lost my individual property belonging, of which the following:

In money	$40
A watch and chain, worth	30
My provisions, worth	15
Two pairs of boots and one of shoes, worth	15
An oil-cloth suit, worth	8
Three pairs of pants, worth	15
A jacket, worth	5
An undercoat, worth	20
An overcoat, worth	30
My shirts and under-clothes, worth	15
Bed-quilts and sheets, worth	8
Clock and pictures, &c., not valued	
Trunk, worth	4
Total	$205

76 I had been on the Pottsville since the 10th March preceding. I never owned a boat so big. I owned a boat five years ago.

Q. What was the Pottsville worth at that time?

(Objected to, same ground as in examination of previous witness.)

A. I wouldn't want to give over thirty-five hundred dollars for her.

Cross-examined:

I owned the Hunter four years this fall; one-half of my brother's and the other half of John Mullen's. I was to pay $800 cash; was to have the marble from Troy to Philadelphia to carry as a part of the bargain. I paid $200 down in the fall; in the spring I paid $200 more, and the balance I paid as I worked along on their job of carrying marble and cement. When I bought the Hunter she was in the neighborhood of seven years old. That is all the boat I ever owned alone; since that I have been pilot of a steamer, since the boat was sunk. I have not bought any boat since that. I got stuck on the Hunter, and I could never get enough to buy another. I don't know how much I sold the Hunter for—some 400 or 500 dollars. The Hunter would carry 250 tons. I sold her the same fall I bought her. I don't own any interest in any canal-boat now.

Redirect examination:

I was acquainted with the C. J. Hoffman when she was building.

Q. What was her value at the time of collision?

(Objected to, on same grounds as stated in previous objection.)

A. She was a right good boat; forty-six hundred dollars, I should think.

77 Cross-examined:

Mr. McWilliams asked me what I knew about the Hoffman. I told him that Mr. McDonald, marble agent, Philadelphia, talked with me about it when she was being built; that was the summer that I had the Hunter. I did not buy her; she did not suit the business; I went on her deck and inside. Mr. McDonald is dead. The Hoffman was built at Kensington—up that way; built for sale. I would have bought her if she had suited my business—the marble business, I mean. I made no offer for her; I never examined her after that. McDonald did not make any offer for her. I have never been employed by

Mr. McWilliams. The only talk I have had about her value was that Mr. McWilliams asked me what I thought she was worth, and I told him that I would not give over $4,600 for her; he said she might be worth more. I first mentioned that sum. That conversation took place to-day, a few minutes ago.

JAMES MONK.

Sworn to before me this 4th day of December, 1871.

JOHN J. KEHOE,
Notary Public, N. Y. Co.

It is consented that the preceding deposition, sworn to before a notary public, be filed with the commissioner as a part of the testimony before him. The objections being reserved to be passed upon by him.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Claimants.

November 15th, adjourned to 22d inst., 2 p. m.

November 22d, adjourned to December 4th.

December 4th, adjourned to 5th inst., at 2 p. m.

78 DECEMBER 5TH.—Libellants recall—

DANIEL MCWILLIAMS, recalled:

I am the owner of the C. J. Hoffman, one of the barges alongside of the tug which were lost. This is the bill of lading given to me by the captain of the Hoffman as the bill of lading for the coal on board of her on this voyage, (marked "Exhibit No. 1," December 5.) The amount of freight, according to this bill of lading, would have been $318.24. I would have had to pay out of that $80 for towing to New Haven from New York, and I did pay for trimming the coal $14.64; I would have had to pay for discharging the coal at New Haven, $43.92; leaving as net, after those deductions, $179.68.

Cross-examined:

The captain received $30 from the Pennsylvania Coal Company on account of freight, and the expense of running the barge was $3 per day, which I paid the captain. If the Hoffman had gone to New Haven all right, she would have taken a freight from there back to New York if she could have got it, and, if not, would have come back empty. The ordinary average time from New York to New Haven, discharge there and return to New York, would be about eight days. I don't know personally how much if any coal was on the Hoffman at the commencement of this voyage, nor when she sunk. I can't give the exact dimensions of the Hoffman, but I can judge pretty well as to them from her appearance. I judge she was about 100 or 105 feet long; about 18 foot beam; about 10 foot hold. She was built expressly for the coal trade through the Delaware and Raritan Canal; she was similar to the boats that had run in that trade—except larger and better built.

Redirect:

79 Her capacity through the Delaware and Raritan Canal, on a draught of seven-foot water, was 250 tons to New Haven; loading at Elizabethport, or New York, or Rondout, she would carry about 300 or 325 tons.

Q. What else was lost on board besides the coal?

(Objected to, as it appears that witness was not present; objection overruled; exception.)

A. Cabin furniture, beds, bedding, lines, anchor; these articles belonged to me; I can't tell their value.

Q. How long had these things been used?

A. Some a month, some a year. They were worth at least $150.

Recross:

I was not on the vessel at all during this trip, so that I don't know personally what was on board.

DANIEL McWILLIAMS.

Subscribed and sworn to this 5th day of December, 1871, before me.

GEO. F. BETTS,
U. S. Commissioner.

Adjourned to 11th instant, 2 p. m.

DECEMBER 11.—Libellants offer depositions taken de bene esse, in Philadelphia, before Charles P. Clark, U. S. commissioner, November 25, 1871.

(Objected to as nothing appears to show jurisdiction, and that the act has not been complied with.)

80 And the counsel for the claimant requests that an entry be made that no one was authorized to appear and cross-examine on behalf of the claimants at the taking of such depositions.

(Objection sustained; depositions excluded.)

It was admitted that the gross freight which would have been earned by the C. J. Hoffman, if she had arrived safely with her cargo at New Haven, would have been $318.24, subject to deductions for expenses in carrying the same.

Adjourned—to be called up on a two-days notice by either party.

DECEMBER 19.—Libellants call—

PATRICK T. LYNCH, sworn:

I was captain of the C. J. Hoffman at the time of the collision with the Galatea. Her cargo then was coal; she had 244 $\frac{16}{20}$ tons of coal on board; I was taking it from Newburgh to New Haven, Connecticut. The freight was $1.30 per gross ton, making in the total over $317. I lost myself all my clothing by the collision (objected to, as witness is not a party to the suit) and stores—no money. At a fair valuation, what I lost was worth about $300.

Cross-examined:

After the collision I went on the Vim, so as not to be drowned. I then loosed the boats attached to the Vim that were sinking, and they sunk as the result of that; all three sunk. I saw them all sink. I remained on the Vim, and we helped carry one of the barges into the cove—not the Hoffman—and she sunk. (Objected to on the ground that matters relating to the collision were gone into on the trial, and are not examinable here; objection overruled; exception.) She sunk in Bounty's Cove. The Vim then came back to New York, and I in her. I afterwards

81 went out there to Hell Gate on the Vim, the Sunday morning following, I think; searched to see if we could see anything of those boats. We found part of the deck of the Hoffman. Gladwish was with us; I think Robert was not. That is the only time I recollect going out

to search. We saw also about three-quarters of another boat, the Pottsville or Reading, in the cove, and we also felt another boat with a pole that had her coal on board. She seemed about seven feet under water; her bow was about that deep, but her stern was deeper. We had no pole that would touch her stern. Our pole was about ten feet long. We then came back home. That is all we did about these boats. On our way back we found a bow at the foot of Twenty-third street, which was supposed to be of one of Gladwish's boats; the other part of that boat laid bottom side up in Bounty's Cove. I did not weigh the coal on the Hoffman.

Q. Do you know anything about it, except what the weigher told you?

A. The weigher did not tell me, but the Pennsylvania Coal Co. gave me this bill of lading, on which to collect freight at New Haven. If we had no detention at New Haven but the time of discharging, it would occupy about eight days to go from New York to New Haven with a cargo, discharge, and return. That was the trip we were then engaged on. I had been on the Hoffman ever since she was built, October, 1867. I am not in the employ of McWilliams; have not been since the collision. Prior to collision the Hoffman ran from Baltimore and Philadelphia to New York, through the canal and sometimesup the river. Tinkering and caulking was put on the boat when she needed it; she was recaulked once and refastened after she was built; she was a good boat, and did not need much tinkering. I never heard McWilliams offer her for sale, that I recollect. I have not made up a list of the clothing or stores that I lost on the Hoffman. The stores were worth, I think, about $50; the $250
82 is for clothes and other articles on board. My man lost his clothes, and I have included that in this. He was about 18; not my son nor ward. About $75 was his clothing; the rest was mine.

P. T. LYNCH.

Subscribed and sworn to this 19th day of Dec., 1871, before me.

GEO. F. BETTS,
United States Commissioner.

JOHN VAN DUSEN, sworn:

I am one of the firm of J. & G. Van Dusen, formerly of Kensington, Philadelphia. Our firm built the barge that was afterwards called the C. J. Hoffman. I didn't charge my mind with dates, but we built her about three or four years ago.

Q. About how much did she cost?

(Objected to; objection sustained; exception.)

She was built of Delaware white oak, Wilmington yellow pine, and white pine.

Q. Was there anything unusual or extra in regard to the build of that boat; and, if so, what?

A. The whole boat was extra and unusual in the construction of that class of barges. They generally put a three-inch keel; we put in her a four-inch keel. They usually put an eight-inch stem, composed of a straight stick of flitch; we put in a Delaware white-oak root stem, twelve inches siding. The stern-post was the same, twelve inches; Delaware white-oak rudder-stock the same, twelve inches—Delaware white oak, which is valuable, and outlasts other timber. Her beams were of Delaware oak, and seven inches siding—usually five to six inches in that class of boats. Her wales and outside plank in the straight part of her were of the best southern yellow pine, more lasting than the Pennsylvania oak they

generally use in those boats. The grand feature of cost and value
83 for lasting service was her bilges, being composed of large oak kelsons, 10 x 14 inches, into which the floors and timbers were both dove-tailed, and the bottom plank and side plank rabbited down on them. There were also long thick oak streaks, 4 x 10 inches, running on top of these kelsons and bolted through them, and bolted the other way through each timber with rivet-headed bolts, riveted up on said streaks and kelsons. There was also long oak streaks running along the ends of the floor, bolted through the ends of the floor and through the said large kelsons by the same kind of bolts. That was to make a boat that did not require or expose any caulking-seam in her bilge, she having but two seams in 24 inches in that locality, and they good square caulking-seams. This was to make a bilge far superior to the ordinary bilges. I estimated that we put thirteen tons of extra timber in her keel and bilges, principally in the bilges.

Q. About what was she worth when she left your hands?

(Objected to; objection overruled; exception.)

A. At least five thousand dollars.

Q. Has the value of such vessel increased or diminished since then?

A. Rather increased, I think, but I have not known any other vessel exactly similar to her. This estimate of $5,000 does not include her windlass nor her painting, except the priming coat, nor her fitting out; in this estimate I only include the ship-carpenter work. I saw her first load, and it was from 245 to 248 tons, which was all she could carry on a draft of 6 feet 9 inches through the canal; when she was not cramped for a draft of water, I judge she would carry nearly 300 tons. I have been working at ship-building about ten years of the last twenty, and was clerk to master carpenter at navy-yard 1½ years, and was apprenticed to ship-building.

84 Cross-examined:

Q. Was this vessel built by contract, or built by you and your brother and then sold?

(Objected to, and objection overruled; exception.)

A. No contract; a cousin of ours told us to go ahead and build a boat. He advanced some money to be used in building the boat. When she was nearly finished he took possession of her under his lien for this advance. There were no legal proceedings to enforce it, but we surrendered it to him. We did not get to the point of selling, but we relinquished her to him.

Q. Did the transaction prove a loss to you and your brother?

(Objected to; objection sustained.)

Q. What is the name of this cousin, and is he still living?

A. Henry Bumm; he is still living, corner 15th street and Gerard avenue, Philadelphia.

Q. Did you ever build any other canal-boat?

A. No, sir; but have repaired a good many; never bought or sold a canal-boat. I had no knowledge of the value of canal-boats, except hearing captains and owners say what they paid for them.

Q. When did you go on board and talk with captains and owners about what they paid for boats?

A. Within a few months previous to the time when we commenced to build this boat. I was particularly interested in the cost and value of boats at that time, and tried to gather all the information I could from owners of new boats; that was because we contemplated building ourselves.

Q. When was this boat sold by your cousin Bumm?

A. I don't know anything about that or his business. I don't know that she is sold yet.

85 Q. Did you ever hear of any one else being the owner of this boat afterward?

A. As far as my memory serves, not till after this accident happened her.

Q. When did you last see her?

A. I can't say; to the best of my memory, it was the time she had had first that load of coal in.

Q. Does the estimate of her value refer to her value at the time you parted with her?

A. It does.

Q. Were you ever offered that sum for her?

(Objected to; objection overruled; excepted to.)

A. No.

Q. Do you know of any person to whom you could have sold her at the price you have named?

(Objected to; overruled.)

A. I can't name any person; did not have a chance to try.

Q. Did you ever hear of any vessels being built in the way this one was built?

A. Yes, I have heard.

Q. Who have you heard of as building vessels like her?

(Objected to; overruled.)

A. Mr. Causland; he is in the State of New York somewhere. I heard it, after I built the Hoffman, from boatmen. The Hoffman was extra strongly braced.

Q. If once cut in two, was she sufficiently strong to be fastened together again?

A. Of course she could, but it would cost more than she cost; it could not be done mechanically and make a good job of it.

86 Q. What would be the expense of uniting the parts of this vessel if separated?

A. To unite them same as before, with equal strength, she would have to be unbuilt and built over again, costing more than to build her in the first place.

Q. Did you ever hear of a vessel being rebuilt?

A. I have.

Q. How many?

A. Well, I couldn't say exactly; I know two in point; I judge in my life-time I have heard of as many as twenty.

Q. It is nothing very unusual or extraordinary to have them rebuilt, is it?

A. It is unusua but not very extraordinary.

JOHN VAN DUSEN.

Subscribed and sworn to before me this 19th day of Dec., 1871.

GEO. F. BETTS,
U. S. Com.

Libellants rest.

1872, January 18th, all present. Adjourned to 20th, 1 p. m.

87 U. S. district court, southern district of New York.

FREDERICK ROBERT AND WILLIAM E. GLADwish et al.
vs.
THE STEAM-PROPELLER GALATEA, HER ENgines, tackle, &c.

UMSTEAD WELLS, being called and sworn as a witness on behalf of the claimant, testified as follows:

I live in Jersey City. I am agent of the mining and shipping firm of Rothermel & Co., of Philadelphia. From the summer of 1863 to March, 1866, I was the agent of the Philadelphia & Reading Railroad Company. I am acquainted with the value of canal-boats, and have been for twenty years. I knew the canal-boats Pottsville and Reading, which were owned by that company, and were afterwards, as I understood, sold to Mr. Gladwish. They were built at Chester, Pennsylvania, and put into service about the first of November, 1862. In December, 1869, they were a little more than seven years old, and their market value at that time (that is, in December, 1869) was, in my opinion, from $1,500 to $1,800 apiece. I should not think they were worth more than that.

Cross-examined by counsel for libellant:

I do not know what they were sold for. The Reading Railroad Company paid, I think, $4,000 apiece for them when they were new; they had them built. I do not know what condition they were in when sold to Gladwish. I left the company March 1st, 1866—about two years before Gladwish bought them. I never saw them after I left the company.

88 Redirect:

While I was with the company I was in the habit of seeing them, and knew their condition.

UMSTEAD WELLS.

Sworn to before me this 19th day of January, 1872.
JOHN M. BOWERS,
Notary Public, County of New York.

We consent that the foregoing testimony be read and used in the foregoing case with the like effect as if taken before the commissioner herein.
New York, January 19th, 1872.
PLATT, GERARD & BUCKLEY,
Libellants' Proctors.

U. S. district court, southern district of New York.

FREDERICK ROBERT ET AL.
vs.
THE STEAM-PROPELLER GALATEA, HER ENgines, &c., and the Providence and New York Steamship Company, claimants.

JANUARY 25TH, 1872.

LEWIS TICKNER, being duly sworn and examined as a witness on behalf of the claimant, testified as follows:

89 I reside at Manayunk, in Philadelphia, Pennsylvania, and my

A. I don't know anything about that or his business. I don't know that she is sold yet.

85 Q. Did you ever hear of any one else being the owner of this boat afterward?

A. As far as my memory serves, not till after this accident happened her.

Q. When did you last see her?

A. I can't say; to the best of my memory, it was the time she had had first that load of coal in.

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A. It does.

Q. Were you ever offered that sum for her?

(Objected to; objection overruled; excepted to.)

A. No.

Q. Do you know of any person to whom you could have sold her at the price you have named?

(Objected to; overruled.)

A. I can't name any person; did not have a chance to try.

Q. Did you ever hear of any vessels being built in the way this one was built?

A. Yes, I have heard.

Q. Who have you heard of as building vessels like her?

(Objected to; overruled.)

A. Mr. Causland; he is in the State of New York somewhere. I heard it, after I built the Hoffman, from boatmen. The Hoffman was extra strongly braced.

Q. If once cut in two, was she sufficiently strong to be fastened together again?

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A. It is unusua but not very extraordinary.

JOHN VAN DUSEN.

Subscribed and sworn to before me this 19th day of Dec., 1871.

GEO. F. BETTS,
U. S. Com.

Libellants rest.

1872, January 18th, all present. Adjourned to 20th, 1 p. m.

87 U. S. district court, southern district of New York.

FREDERICK ROBERT AND WILLIAM E. GLADwish et al.
vs.
THE STEAM-PROPELLER GALATEA, HER ENgines, tackle, &c.

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88 Redirect:

While I was with the company I was in the habit of seeing them, and knew their condition.

UMSTEAD WELLS.

Sworn to before me this 19th day of January, 1872.
JOHN M. BOWERS,
Notary Public, County of New York.

We consent that the foregoing testimony be read and used in the foregoing case with the like effect as if taken before the commissioner herein.
New York, January 19th, 1872.
PLATT, GERARD & BUCKLEY,
Libellants' Proctors.

U. S. district court, southern district of New York.

FREDERICK ROBERT ET AL.
vs.
THE STEAM-PROPELLER GALATEA, HER ENgines, &c., and the Providence and New York Steamship Company, claimants.

JANUARY 25TH, 1872.

LEWIS TICKNER, being duly sworn and examined as a witness on behalf of the claimant, testified as follows:

89 I reside at Manayunk, in Philadelphia, Pennsylvania, and my

business is boating. I have been about twenty-seven years in the boating business; in the canal-boat business all that time. I knew the canal-boat Pottsville, which belonged to the Philadelphia & Reading Railroad Company, and which was afterwards sold to Mr. Gladwish, as I understood. I was the captain of that canal-boat from the spring of 1864 down to the time when she was sold to Mr. Gladwish. She commenced running in the fall of 1862, and made two trips that fall, and was run by my brother through the season of 1863. I took charge of her in the spring of 1864. While she was in my charge she was strained several times by grounding when loaded, and I consider she was very much injured in that way; particularly she took the ground at New Brunswick, New Jersey, about two years before the railroad company sold her, and was very badly strained by it. She had a cargo of two hundred and thirty tons of coal at that time on board. We were directed to lie in a particular place, waiting to be towed away. The tide was very low, and when it went out the Pottsville caught on her bow and on her stern, leaving the midship unsupported. The weight of the coal in her made her sink down in the middle, and that strained her all over; it threw her out of line, and pulled her apart and sprung her. She began to make water, and when the tide came up she would have filled, but we set five or six men pumping and floated her over to the opposite shore, and there we beached her. She laid there four days; she never was good afterwards; she did not get over that disaster. The only repairs that were made on her after that were just enough to keep her afloat. I had a great deal of trouble with her after that; she kept leaking, sometimes very badly, and did so down to the time that she was sold; her deck-frame was very much decayed, as well as her deck; she was not kept properly caulked; she would sometimes be left in the summer a month or
90 two at dull times without any one to look out for her, and then her deck would get very much open. All this time the railroad company was spending as little money as possible upon her—just enough to keep her going. I saw her in the summer of 1869, in New York, and the captain then said that she continued to leak some, at times very bad. I know the value of canal-boats, and have been familiar with their prices for twenty years. At the time the Pottsville was sold to Gladwish I think that she was not worth any more than $1,500; I think she was as much as two-thirds gone; she was pretty well used up. I used to see the Reading from time to time while the railroad company had her; was on board of her two or three times a month during that time, sometimes oftener; sometimes I would make a trip through the canal in the same tow with her. When she was sold to Gladwish she was, in my opinion, half gone; she was not worth more than $1,700 or $1,800 when she was sold to Gladwish. The Reading had not had any general repairs put on her; nothing more than little temporary repairs to keep her running along.

Cross-examination waived.

LEWIS TICKNER.

Subscribed and sworn to this 25th day of January, 1872, before me.

G. F. BETTS,
U. S. Commissioner.

Adjourned to 26th inst., 2 p. m.

January 26th, adjourned to 31st, 2 p. m.

91 United States district court, southern district of New York.

FREDERICK ROBERT AND OTHERS, LIBELLANTS,
against
THE STEAM-PROPELLER GALATEA, HER ENGINES, TACKLE, &c.

JOHN RUNYON, being duly sworn and examined, testified as follows:

I live at New Brunswick, New Jersey. I have a marine railway at that place for hauling out vessels for repairs, and have had for about eighteen years; in the course of that time I have been engaged in hauling all kinds of canal-boats, schooners, barges, and others upon my railway, and repairing and rebuilding them; during all this time I have been acquainted with canal-boats and know their value. I have been connected with the business of canal-boats for about thirty years, but in business for myself only about eighteen years. I have seen the barges Pottsville and Reading, which were owned by the Reading Railroad Company, and was acquainted with their condition and value. I recollect our hauling out the Pottsville on the 27th April, 1868; she was leaking, and we had to haul her out to caulk her bottom. She was a boat at that time about six or seven years old. I have known her and the Reading both for that time. About all we did at that time was to caulk her, so as to prevent her from leaking. At that time I think she was worth about $1,500, not more than that. (Objected to.) We never put any general repairs upon her; nothing more than enough just
92 to keep her going. The Reading we hauled out on the 25th of October, 1867; she was hauled out for the same purpose—to stop her leaking; this was done on her way through the canal; she was found to be leaking, and we hauled her up to stop the leak. We made no general repairs upon her, just enough to keep her going; we put a cleat and samson-post in one or the other, to take the place of a cleat and post that had been pulled off by the steamer in towing; that was all, except caulking. The Reading was just about the same value, not worth more than $1,500, at that time. (Objected to.) The boats that are built at Chester are not regarded as being as good as the Schuylkill boats; the timber in them is not so good, and they are not as well built. The frames are lighter and the fastenings are not so good in the Chester boats. The Chester boats are not worth so much as the Schuylkill boats; they are considered inferior boats. (Objected to.)

Cross-examined:

I do not know the tonnage of these boats; they carried through the canal about 240–50 tons; about 102 feet long, 20 feet beam, 8 or 9 feet hold; deeper and bigger than common run of canal-boats. I don't think I charged over $30 odd for repairing the Pottsville. I do not know who was then the captain; that was April 27, 1868. We did the work properly; I think we stopped the leaking; I never heard any fault of it afterwards. I can't tell what the accident was that rendered this necessary. I don't recollect that any thing else was wanting at that time to make the boat proper for use. I was employed to do this caulking by the Reading Railroad Co.; whether by captain or agent I don't remember. I suppose I stopped the leaking on board the Reading at the time I repaired her; heard nothing to the contrary. I don't hardly think there were other repairs necessary besides the caulking, cleat, and samson-post. It is usual for boats to leak once in awhile in the course of a

season, and on that account they are hauled out and repaired. I did not know whether those boats were salted when built.

93 Redirect:

The fact that they were salted would have made a difference in my estimate.

Recross:

I would have estimated them $500 more if the boats had always been well caulked and never been sunk.

JOHN RUNYON.

Sworn to before me this 31st day of January, 1872.

PRESCOTT HALL BUTLER,
Notary Public, N. Y. Co.

We hereby consent that the foregoing examination be read and used for the above-entitled cause with the like effect as if the same had been taken and sworn to before the commissioner herein.

New York, January 31, 1872.

PLATT, GERARD & BUCKLEY,
EVARTS, SOUTHMAYD & CHOATE,
Libellants' Proctors.

January 31st, adjourned to February 1st, 2 p. m.

February 1st, adjourned to 7th inst., 2 p. m.

94 United States district court, southern district of New York.

FREDERICK ROBERT ET AL.
vs.
STEAM-PROPELLER GALATEA, HER TACKLE, apparel, &c.

SAMUEL STOKLEY, being duly sworn and examined, testified as follows:

I live in Chester, D'are County, Pennsylvania; my business is that of ship-carpenter and boat-builder. I have a yard of my own, and have had since 1868; during that time I have been in business for myself, building canal-boats and barges. I have been connected with the building of canal-boats and barges since 1860; before that I was connected with building vessels of all descriptions. I have been connected with building vessels for twenty years. I have sold canal-boats and barges, and have been acquainted with their value since 1862. I knew the barges Pottsville and Reading, which were built by Mr. Frick for the Philadelphia & Reading Railroad Company in 1862, and knew their value. I was foreman of Mr. Frick's yard at the time they were built, and, as such, had charge of building them. The yard where they were built was at Chester. Neither of them was salted; they were built light, in the ordinary way for boats running through a canal. If we were building a boat for river service or for service in the Sound, we should build her much heavier than these boats are built; heavier in every respect. In these boats we used ordinary cut spike instead of galvanized spike, and the fastenings were light and ordinary throughout, not such fastenings as we should put
95 into boats for the river and the Sound. These boats were all built of green material, with the exception of the side-

planking and deck, which were of seasoned white pine; this pine is an inferior material for strength to the oak; it was cheaper and lighter than the oak. The boats were not so substantial or durable as they would have been if they had been built of oak. I have been connected with building at least two hundred canal-boats and barges in my life, and the Pottsville and Reading were cheap, light boats. I should say that the life of these boats would be about eight years, if they had ordinary care, and at the end of eight years it would cost more to repair her than she would be worth; that is the result of my experience and observation. Eight years is generally regarded in the trade as the life of boats of this description; at the end of seven years, after ordinary care, I think that these boats would not have been worth more than a quarter what they were worth when new; they would not be worth more than that to sell. I would not buy a boat of the description of these boats when she was eight years old to use at all as a canal-boat, nor for any purpose except for old lumber or to fill up a hole or a branch in a bank; after six or seven year's use, the boats get strained and used up all over, and the upper works are generally pretty well rotted out; nothing can be done with them except to tear them to pieces and build them up anew, which costs more money than a new boat would, and still they are old boats. When the Pottsville and Reading were first built they were worth $3,100; that was the price which the Philadelphia & Reading Railroad Company paid for them, and they were not worth more than that price at that time. I have read over the testimony of Mr. Van Dusen, the builder of the C. J. Hoffman, a copy of which was furnished me for that purpose from Mr. Tweed. I do not find from that testimony that there was anything extraordinary or unusual about that boat; it was stronger than some canal-boats
96 and weaker than others; but there was nothing unusual or extra about her. I have looked over that testimony carefully, and I think that such a boat as that, when new, would not be worth more than $2,900; I could have built her for that money at any time during the last six years, and would do it now.

Cross-examined:

Q. How do you know what the Reading Railroad paid for these boats?

A. I know from what Mr. Frick told me; I did not make the contract myself; my only knowledge is from what Mr. Frick told me. Mr. Frick was the owner of the yard in which I was foreman at the time these boats were built. I don't think those boats were named when they left the yard. I saw them after they were named, several times. I did not recollect the names at the time; I knew the boats but did not know the names, at least positively; Mr. Frick told me what their names were after they left there. Building so many, I never pay any attention to the names of numbers of the boats after they leave the yard. I don't know that I ever built any boats that went directly into the Sound trade. I have built canal-boats that went into the Sound trade. A boat built expressly for the Sound trade is a boat worth a third more money, and much stronger.

Q. Have you any knowledge of these boats except what you have derived from what Mr. Frick told you since they left your yard?

A. I have; I have seen them several times.

Q. When and where did you see them?

A. I have seen them in Philadelphia and in Chester. I saw them in Chester about a year after they were built.

Q. Do you remember the names they had on them when you saw them at Chester?

A. I have never seen the names.

97 Q. Why do you think those were the boats which the libellants lost in this collision?

A. I don't; but I know the boats I built as well as I know my own foot.

Redirect:

These were the only boats of that size built in Mr. Frick's yard for the Philadelphia & Reading Railroad while I was in his employ. These two boats, with the addition of a steamer, were the only boats built for the Philadelphia & Reading R. R. Co. in Mr. Frick's yard while I was in his employ. I think in 1862 these boats were built.

Re-cross:

Q. As you have spoken before, that you don't remember that you observed the names on the two boats, have you any means of calling these two boats you built the Reading and Pottsville, except what you were told by Mr. Frick?

A. I have; the reason is, they were the only boats we built for that company, and they had no other names.

Q. Is that all the answer you can give to my question?

A. That is all the answer I have to make.

SAMUEL STOKLEY.

Affirmed to before me this 7th day of February, 1872.

PRESCOTT HALL BUTLER,
Notary Public, N. Y. County.

We consent that the above testimony of Samuel Stokley be read in evidence with like effect as if taken before the commissioner.

Dated February 7th, 1872.

PLATT, GERARD & BUCKLEY,
98 *Libellants' Proctors.*

United States district court, southern district of New York.

FREDERICK ROBERT ET AL.
against
STEAM-PROPELLER GALATEA, &C.

WILLIAM FRICK, being duly sworn and examined, testified: I live at Norfolk, Virginia, and my business is that of building canal-boats and barges, and repairing all kinds of vessels up to vessels of four or five hundred tons. I have been engaged in the business of building canal-boats and barges since 1836. I served a regular apprenticeship under the old system, and learned my trade. I commenced building canal-boats and barges for myself in 1842, and have been engaged in building them ever since on my own account. Since 1849 I have built several hundred boats for the Pennsylvania Coal Company and the Delaware and Hudson Canal Company. I have had contracts for them for as many as one hundred and twenty or one hundred and thirty during a year. I have built as many as a hundred boats a year for the Schuylkill Navigation Company, and have built several hundred boats for the Lehigh Navigation Company. I have built a

large number (something under a hundred) for the Morris Canal Company, and since 1849 have been extensively engaged in the business all the time, and have been at all these times acquainted with the values and prices of canal-boats; in fact the prices at which I would build canal-boats have fixed the prices in the market for that kind of boats. I built the barges Pottsville and Reading, in the year 1862, for the Philadelphia and Reading Railroad Company. They were built at the
99 same time with a steam-barge for that company, and were the only boats which I ever built for the Philadelphia and Reading Railroad Company until the winter of 1870–'1. I have heard the direct testimony of Mr. Stokley in this case, and the boats he has described are these two boats which I built at that time for the Philadelphia and Reading Company. When these boats, the Pottsville and Reading, were built, they were worth $3,100 apiece; that was what we got for them, we supplying the cabin with some furniture and lines for towing. At that price we furnished the boat with lines complete ready for service. The furniture and lines were worth fully one hundred dollars, and that was what we put on the extra one hundred dollars for in the price. That sum ($3,100) was what they were worth ready for service. They were an ordinary-built canal-boat, lightly built and lightly fastened. They were built for light work; they were of green lumber, except side-plank and decking, which were of seasoned white pine. White pine is cheaper and not so substantial for side-planking as the oak. They were not such boats as are built for river and Sound use, but are lighter, and lighter fastened, than if we were building for Sound use. There is not the draft of water in the canal to admit of a very substantial, heavy boat. These were built light on that account. Eight years is, in my opinion, the life of such a boat as these were, if kept in ordinary repair. I have examined several hundred boats which were built by me for the Schuylkill Company, to observe the effects of age, for my own information. I was then negotiating for a contract to build boats with a view of purchasing them by instalments from the company, and it was important for me to satisfy myself entirely on the point of the duration of boats, and to get at their average life. The boats which I examined were as good boats, and of the same material, except of oak siding instead of pine, as the Pottsville and Reading. I found their average life did not exceed eight years; after that they were not, in my estimation,
100 worth repairing, and that a number of them, after seven years, were not worth repairing, in my estimation. The coal and canal companies usually dispose of their boats when they get to be seven or eight years old. Neither the Pottsville nor the Reading were salted. If these boats had been kept in ordinary good repair they would not have been worth, in my opinion, when seven years old, more than one-fourth of what they were worth when new; I do not think I would have given so much as that. I would not buy a canal-boat eight years old for my own use, for I should be afraid of her, and the expense of repairs and insurance would be too great. I have owned boats and had them navigated, but I never kept one after she was eight years old.

(The above deposition is taken subject to all objections on the part of the libellant except as to the manner in which the same is taken; that is to say, in not being taken before the commissioner.)

Cross-examined:

Q. Did you ever buy a canal-boat yourself?

A. Yes, sir.

Q. When did you buy it?

A. I think in 1845, or 1846, or 1847.
Q. Have you bought any canal-boats since then?
A. I think not, sir.
Q. When did you stop building canal-boats?
A. I really never stopped.
Q. Are you building canal-boats now?
A. Yes, sir; I have some on the stocks.
Q. What do you get for building a good canal-boat now?
A. We get from $1,600 to $2,350.
Q. Is that the highest?
A. That is the highest price I have got for some time.
101 Q. When did you get higher for any canal-boat?
A. I think the highest price I got was the Pottsville and Reading, except a patent boat I once built.
Q. What is the size of the canal-boats which you now build or have built for the last few years?
A. A hundred feet long, 17½ beam, 9½ feet high, bow and stern, to the under side of the deck. We have built some eighty-two feet long, 15 feet beam, about 8 feet deep forward and aft. These latter are the lower-priced ones. We paint them all.

WILLIAM FRICK,

Sworn to before me this 7th day of February, 1872.

PRESCOTT HALL BUTLER,
Notary Public, N. Y. County.

We consent that the above testimony of William Frick be read in evidence with like effect as if taken before the commissioner.
Dated New York, February 7th, 1872.

PLATT, GERARD & BUCKLEY,
Libells.' Prs.

102 United States district court, southern district of New York.

FREDERICK ROBERT ET AL.
vs.
STEAM-PROPELLER GALATEA, &C.

LEWIS H. HOAGLAND, being duly sworn, deposes and says:

I live at New Brunswick, New Jersey, My business is ship-building and repairing, and has been so for the past twenty-three years. During that time I have been in business for myself, and have built sixty-eight steamers, sailing-vessels, and barges. During that time I have kept myself acquainted with barges, and have been in the habit of overhauling and repairing the Schuylkill barges and barges which were engaged in carrying coal from our canals to cities. I have owned interests in such barges, and have been acquainted with the value of that class of barges. I have read the description of the C. J. Hoffman, furnished in the evidence of Mr. Van Dusen, in this case, and the testimony of Mr. McWilliams, and do not find that there was anything extraordinary about her. She was of the usual character and construction of the Schuylkill barges which I have been acquainted with. Boats of that character and construction are built in the Schuylkill regions at from $2,200 to $2,600, and have been for the last three or four years. The best boats from that region we have bought, during

the last three years, for $2,600. These were boats which were in every respect as good as the C. J. Hoffman, as described in the testimony of Van Dusen and McWilliams At any time during the last three
103 years I could have made a contract to build just such a vessel for $2,600.

LEWIS H. HOAGLAND.

Sworn to before me this 10th day of February, 1872.

HENRY F. LIPPOLD,
Notary Public, N. Y. Co.

Taken subject to all objections, except as to the manner in which testimony is taken.

We consent that the foregoing testimony be read and used in the above-entitled cause with the like effect as if duly taken before the commissioner herein.

New York, February 10, 1872.

PLATT, GERARD & BUCKLEY,
Libellants' Proctors.

1872—MARCH 12.—Libellants call—

JOHN APPLEGATE, sworn:

In 1869, and previous thereto, I was a shipwright; at Jersey City fifteen years. In 1869 I repaired the barge Reading, belonging to Robert & Gladwish. The owners employed me to do it in June, 1869. I caulked her and did everything the owner requested me to. When she left my hands I thought her in good condition—nothing wanting that I saw or knew of to put her in good order.

Q. Was there any rotten timber or plank about her?

A. I saw none. We can't caulk planking when it is rotten. Under such circumstances we cut it out so as to caulk.

Q. Did the owners restrict you at all on the repairs?

(Objected to.)

104 A. They did not.

Q. Did or not the owners direct you, specifically, to make specific repairs, or did you use your own judgment?

(Objected to; objection sustained; exception.)

Q. When that boat left your hands what was her quality and condition—good, bad, or indifferent?

A. Good.

Q. Was she, or not, fit and proper for active service?

A. She was fit. In 1862 wages for building such boats were $2.50, and in 1869 were $4.25. Iron had advanced fifty per cent., and oak and pine twenty-five per cent. I know nothing about the timber of this boat. Her planking was oak and her deck pine. Her fastenings appeared to be good.

Q. What was her value in the market in 1869?

(Objected to; objection sustained that witness is not shown to have knowledge of market value; exception.)

Q. During the fifteen years that you were in business did you become acquainted with the market value of such boats?

A. I did. I think I was acquainted with the value of such boats in 1869.

Cross-examination as to knowledge:

I never bought a canal-boat. I never sold one. I never owned one.

I have never built one. I have rebuilt and repaired them. I don't think I ever attended an auction-sale of canal-boats. I don't remember ever being present when a private sale of a canal-boat was concluded.

105 Redirect:

Q. When this boat left your hands, what, in your opinion, was her market value?

(Objected to, witness not an expert; objection sustained; exception.)

Q. Did you hear the prices of canal-boats of this kind spoken of?

A. I think I have. I know by practical experience what a boat is worth. I knew how much it would cost to build a boat of this kind in 1869. I don't know as I heard people at that time speak of the prices of such boats in 1869.

Q. What would it have cost to have built a boat of this kind in June, 1869?

(Objected to; objection sustained; exception.)

Recross:

I did not bore into this vessel. I don't know what the condition of the timbers were. I did not see any of her timbers except that on the Reading. I put in a piece of plank-shear and saw the ends of some of her timbers. I put in this plank-shear because it was damaged; the planking was not taken off nor the skin taken out. Putting on that plank-shear exposed a place about ten feet long by fourteen inches wide. I judged from her general appearance she was six years old.

JOHN APPLEGATE.

Subscribed and sworn to this 12th day of March, 1872, before me,

G. F. BETTS,
U. S. Commissioner.

106 GEORGE CURNON, sworn:

I was ship-carpenter, in 1869, at Erie basin, below Atlantic dock. I took the Pottsville, owned by Robert & Gladwish, on the dock in *in* 1869, and caulked her in the summer. When she left my dock she was tight and ready for work, and in good condition. I have been about thirty years in my business. I bought and sold canal-boats before and since, but not in the summer of 1869.

Q. What was the value of the Pottsville at that time?

Cross-examined:

A. I have not bought or sold boats of the character of the Pottsville. I bought a lake-boat six years ago, and sold her three months after I bought her; that is a different kind of boat from this. I also bought a river-built boat, different from the Pottsville, about twelve months ago. They were second-hand boats, four to six years old. Those are all I owned of that description. I never built boats of that kind. I never attended an auction-sale nor private sale of such boats.

Redirect:

The Pottsville was, of her class, a good, strong, large boat; larger than the usual run of the Reading R. R. boats.

Q. What, in your opinion, was her market value in 1869?

(Objected to; objection sustained; exception.)

G. G. CURNON.

Subscribed and sworn to this 12th day of March, 1872, before me,

GEO. F. BETTS,
U. S. Commissioner.

Adjourned to 14th inst., 3 p. m.

107 MARCH 14.—Libellants call—

WILLIAM MURTAGH, sworn:

I reside in New York. My business is shipping. I have been in business about four years. I own canal-boats and barges; have had to do with them twenty years; bought, sold, and run them. I have seen these barges, the Reading and Pottsville; they are barges, not canal-boats. Barges are larger than canal-boats. I think I am competent to give an opinion as to the value of such barges as the Reading and Pottsville.

Q. What was the value of these barges, to the best of your judgment?

(Objected to as not limited as to time; objection sustained; exception.)

Q. When you saw those boats what was their value, in your judgment?

(Objection same; sustained.)

Q. When did you see those boats?

A. In Philadelphia, in Raritan Canal, and at Hoboken.

Q. During what years?

A. From 1864 to 1868.

Q. What, in your judgment, was their value then, and when you last saw them?

(Objected to as too vague, and as double; objection sustained as to first clause, overruled as to last.)

A. I should judge about $3,500 apiece when I last saw them, in 1868. I know Mr. Samuel Stokley, a boat-builder at Chester.

Q. Do you know what he charges to build a boat of this kind now?

(Objected to as incompetent and immaterial; objection overruled.)

108 A. Forty-seven hundred dollars. The price and value of these boats has fluctuated from 1862 to 1869, and up to the present time; it has increased and decreased. In 1862 and 1863 they were low, took a rise in 1864, and went up to 1868; from 1862 to 1868, I suppose, they went up about 30 per cent. Barges are apt to be built much stronger than canal-boats, with heavier timbers.

Q. In barges and canal-boats does or not the quantity and quality of the timber, fastenings, and other materials which go to make up the expense of the boat, increase or diminish with their size?

A. Increase.

Cross-examined:

The last four years I have been in the boating business; for sixteen years prior to 1869 I was on the steamer Thomas A. K. Hill, engaged in towing canal-boats and barges through the Chesapeake and Delaware Canal, and once or twice through the Delaware and Raritan. I was master and part owner. I had full charge and picked up a tow whenever I could. I first saw these boats about 1864, in Philadelphia, loading coal at the docks, or loaded. I did not go on board. I can't say whether both were there or not. I can't say which one I saw. I know it was one of the two, because they were remarkable—the largest boats of the kind. I was on the dock, they in the water. I could not say whether I was on the same side or opposite side of the pier. I saw them next in 1865, one of them. I don't know which. My judgment as to the value of these boats is based entirely on the last time that I saw them. I

could not say which one I saw there; it was at Hoboken, at the California dock, loaded, I suppose, with coal. I did not go aboard of her. She might have been about one hundred feet off from me; there were three or four boats between me and her; I was on the dock. It
109 is on that examination that I base the judgment as to value of these boats. I judged if the other one was in as good order she would be worth as much. This boat was painted lead-color formerly. I don't recollect her color in 1868; I suppose the same as before.

Q. On what do you base your statement as to the present charge of Mr. Stokley for building boats?

A. On this letter. (Exhibit 1, March 14, letter offered in evidence.) I received this letter, from the carrier this morning, in reply to a letter that I wrote him last Monday. I have not a copy of that, but I will write to Stokley to return it, and if he does, I will send it to the counsel. I don't know these specifications to be a description of the Pottsville or Reading.

Q. How do you know, then, what he charges for building such a boat as the Pottsville or Reading?

A. I don't know. These specifications are his prices for a boat of the description contained in those specifications. I have not accepted this offer; I do not intend to.

Q. Why not?

(Objected to; objection sustained.)

Q. Do you desire a boat of this description?

A. I want a boat of that description, but I want to make some changes from his specifications. That is the reason I wrote the letter, because I wanted such a boat——

(Objected to.)

I had not had any conversation with Robert or Gladwish in regard to it before writing the letter; I was just reading the letter when Gladwish called. I have never been spoken to prior to that time about coming as a witness.

Q. Were you not the person who was to have been here as a witness last Tuesday?

110 A. I was; the first time I was spoken to about coming as a witness was Monday or Tuesday last, by Mr. Gladwish. I wrote the letter to Stokley on Monday last, at my own request; and I took the specifications out of my own head that I sent to Stokley, without any consultation on the subject with Gladwish. I never wrote to Stokley before on the subject of boats. I am also in commission business on freights besides shipping; in no other business. I have no other business connection with the libellants, except that we get our boats towed by them—have since 1869. I never owned a barge as large as the Pottsville or Reading. I suppose the one I saw in 1868 must have been five or six years old; I think so, from the time she was built, in 1862 or 3. In 1868 I owned the river-barge Thomas Ward and others; the Ward was one year old.

Q. Whom did you buy her of?

(Objected to; objection overruled; exception.)

A. John A. Cole, Pottstown, Pennsylvania, in 1868. She was 100 feet long, 17½ beam, 9½ hold. I paid $2,675 for her.

(All subject to objection.)

She was then a new boat. The Humphreys was one of the others which I owned; a new boat, 103 feet long, 18 feet beam, 9 feet hold; she is now coming five years old; I bought her in 1867; built by John McNeil, Chester, Pennsylvania. I paid $3,175 for her; $2,500 cash, I be-

lieve, and notes for the balance, perhaps notes for $1,000. I paid for the Ward $2,000 cash, and notes for the balance.

Redirect:

Q. What did Mr. Gladwish say to you when he first spoke to you about coming here as a witness?

(Objected to; objection overruled; exception.)

111 A. He asked me to come up Monday or Tuesday, at 11 o'clock; he told me he wanted me to state all I knew about the Reading or Pottsville; that was the substance of his whole conversation. He said nothing to me at that time about Samuel Stokley; Stokley had called to see me last year about building boats for me. I call the Ward a river-barge, because we employ her more on the river. She is much larger than a canal-boat, and is built much stronger; the excess of size is both in length and height, but not in width.

Recross:

In the fall of 1868 the price of barges declined; that decline continued till the summer of 1869; then barges became high in the fall of 1869. I suppose it costs all of $500 more to build a barge now than in December, 1869.

WM. MURTAGH.

Subscribed and sworn to this 14th day of March, 1872, before me.

GEO. F. BETTS,
U. S. Com.

JAMES T. EASTON, sworn:

I am engaged in shipping and commission business in New York, buying and selling canal-boats and barges; have been in business nine years. I own canal-boats and barges now—sixty-five to seventy; some pretty old; some ten, eleven, or twelve years old.

Q. With ordinary care and proper repairs, how long would it be expected that boats like the Pottsville and Reading would last?

(Objected to as not shown that he knows the Pottsville or Reading; objection sustained; exception.)

Q. What is the ordinary condition of the boats you speak of as ten to twelve years old, as to their capacity to do business?

(Objected to; objection overruled; exception.)

112 A. It is good.

(Description of the Pottsville and Reading read from the testimony of Wm. A. Peall.)

Q. What, in your opinion, was the market value of these boats in 1869—December?

(Objected to as not rebutting; objection sustained; exception.)

A. I bought and sold canal-boats and barges in 1869. I owned them, and was acquainted with their value.

Question repeated.

(Same objection and ruling and exception.)

Cross:

We keep our boats repaired, but in ordinary cases the life of a canal-boat is ten or twelve years, because the captains don't keep them up. I have got twenty to twenty-five boats to-day that are ten years old and upwards, and are good boats, out of sixty to seventy. These boats are not all salted; two or three of them are. The life of a boat varies with its original build and the care taken of it.

J. T. EASTON.

Subscribed and sworn to this 14th day of March, 1872, before me.

GEO. F. BETTS,
U. S. Com.

113 *Notice of reference.*

District court of the United States for the southern district of New York.

FREDERICK ROBERT ET AL.
vs.
THE STEAM-PROPELLER GALATEA, &C.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office at the United States court buildings, at 41 Chambers street, in the city of New York, on the 23d day of March, inst., at 11 o'clock in the forenoon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated New York, the 21st day of March, A. D. 1872.

Yours, &c.,

GEO. F. BETTS,
U. S. Com.

CITY AND COUNTY OF NEW YORK, *ss:*

JAMES A. ALLEN, being duly sworn, says:

That he is clerk in the office of Platt, Gerard & Buckley, proctors for libellants; that on the 22d day of March, 1872, he served a duplicate of the within notice of reference on Evarts, Southmayd & Choate, proctors for claimants, by delivering to and leaving the same with a clerk
114 in the office of said attorneys, at No. 52 Wall street, in the city of New York, during the absence of said attorneys therefrom.

JAMES A. ALLEN.

Sworn to before me the 22d day of March, 1872.

HENRY T. LIPPOLD,
Notary Public, N. Y. Co.

1872, MARCH 23.

Mr. Platt appears for libellants, and files notice of hearing for to-day, with proof of service.

No one appears for claimants.

Libellants read from the files of the court the order made in this case, March 19, 1872, making C. libellants the following persons, who are captains of the barges that were sunk, viz:

Patrick Lynch, claiming	.....	$300
Edward White, "	.....	168
James Monk "	.....	205

Adjourned to 30th inst., 12 m.

March 30th, adjourned to April 6th, 10 a. m.

APRIL 6TH.—Mr. Tweed offers in evidence the letter from Murtagh to Stokley, marked "Exhibit A, April 6th, 1872 G. F. B."

Defendant also offers certified copies of the Government enrollment of the two barges, Pottsville and Reading.

Libellants' counsel objects (1) that if the papers are at all material they are not properly certified, so as to entitle them to be read in evidence; (2) that they are immaterial and *and* irrelevant; (3) if offered to
115 qualify the evidence of Murtagh, that these measurements, having been taken in 1862, were taken under a rule of measurement different from that which existed at the time Murtagh's letter was written, the measurement in 1862 being the length or keel, and now the length being measured on deck.

(Objection overruled; exception.)

Adjourned to 9th inst., 3 p. m.

1872, APRIL 9TH.—Libellants called—

JUSTIN T. TALMAGE, sworn:

I am 54 years of age; am a wrecker; have been eighteen or twenty years. I am acquainted with Hell Gate and the tides there. I went up to Bounty Cove with my wrecking-vessels to raise or attempt to raise a canal-boat loaded with coal that was sunk there. This was, I think, about June, 1871; I can't exactly tell the date.

(Counsel for libellants show the witness a paper, purporting to be a statement of the witness, not, however, in his handwriting, and which the counsel does not claim was made at the time, and asks him to look at it for the purpose of refreshing his recollection as to the date.)

(Objected to; objection sustained; exception.)

I can't tell the date exactly. I have stated what I think the year is, but I can't tell whether it was 1870 or 1871, but it strikes me very forcibly it was 1871.

Q. When you went up there, whenever it was, will you tell me how far under water you found the boat you went to raise?

A. To the best of my recollection, her stern was in 54 feet; 50 to 54 feet.

Q. What appliances had you with you at that time for the purpose of making the attempt to raise her?

116 A. We had a couple of scows of 150 ton burthen each, and what we call a double-jointed canal-boat, hinged in the middle, of about 70 to 75 tons; we had also chains, screws, and logs, and lines to help ourselves with.

Q. Were those the usual and ordinary appliances used by you in your business of wrecking?

A. Yes, sir; except that the jointed canal-boat was extra.

Q. Did you have a diver with you?

A. Yes, sir; Thomas Rand.

Q. Did you make an effort to raise the vessel?

A. Yes, sir.

Q. How long were you about the job?

A. I think about two weeks; may be a little more.

Q. Were you not about it a month?

(Objected to as leading; objection sustained; exception.)

Q. Did you succeed in raising the vessel?

A. No, sir.

Q. Did you at any subsequent time to this time that you have just spoken of renew the attempt?

A. I did not go there but once to make the attempt.

Q. Did you at any subsequent time go there for the purpose of ascertaining, by examining the situation or otherwise, if the boat could be raised?

A. I did. I did not go expressly to examine whether she could be raised, but I had business that called us there.

Q. When was that?

A. I should think some eight months after we went away from her; might be more or less; I can't tell the time exactly.

Q. How long ago was it from the present time that you made the second visit?

A. I think it was in June when we went there again.

Q. June of what year?

117 A. Last June.

Q. That is June, 1871?

A. Yes, sir. I think it was last June.

Q. Well, this last time when you were there did you look to see if she could be raised?

A. We did not examine her for that purpose at that time; we did not look at her; no one could look at her without going pretty well under water.

Cross-examined:

I indicate by this mark, + G. F. B., on the map Ex. 1, April 9, 1872, G. F. B., the place where the sunken canal-boat lay when I first went up there; it was about 100 feet from Woolsey's bath-house.

Q. State how near the point of raising this canal-boat you came?

A. We did not come very near; we got our chains under; we got what I considered our work half done. We put these chains each an inch and a quarter under her. Perhaps they were not plump an inch and a quarter then, but a little rusted. The boat's stern lifted off the bottom when the tide raised. We could not turn a screw that weight; we had to trust to the tide; she was too heavy for screw-power.

Q. Was that the way you expected to raise her when you went out there—by the action of the tide?

A. Part of it.

Q. What was the result?

A. When we screwed down to her, and the tide raised, her head fell off from the rock where it was resting on, and that parted our forward chain, and that nearly sunk our wrecking-boats.

Q. Did you, before attempting to raise her, take out any coal from her?

A. We did from either the forward or scuttle-hatch. I can't tell how many tons; may be half a dozen; perhaps ten tons; but I don't think so much; only so much as we could tong out. If it had been a
118 case of life and death we might have tonged out more. The tongs were oyster-tongs. I sold the coal we got out to buy potatoes with and other stores. I kept the proceeds. That was the only effort made to raise her.

Q. When you first went there was not the stem visible at the lowest tides?

A. The head of it was.

Redirect:

May be three inches of the head was visible at the lowest tide.

Q. At whose instance did you make this attempt?

A. I can't say any one told me to go and get her up. I was talking with Mr. Robert, the libellant, I think, and he said that any one who would raise the coal would undoubtedly be allowed a liberal percentage, but that he didn't know that he had any authority to make any contract to raise it.

Recross:

Q. What was your first information as to there being a canal-boat sunk, or nearly so, at the gate?

(Objected to; objection overruled; except.)

A. I think it was four or six months before I had anything to do with it.

Q. For what purpose did you go to Mr. Robert's office at the time you spoke of; was it to get permission to raise the coal?

A. It was to make a contract, if I could find anybody to do it with. I went there of my own motion. Mr. Robert had not requested me to come. I did not make any contract.

J. F. TALMAGE.

Subscribed and sworn to this 9th day of April, 1872, before me.

GEO. F. BETTS,
U. S. Commissioner.

119 THOMAS C. RAND, sworn;

I am fifty years old. My occupation is submarine diving and wrecking. I made an examination of a canal-boat sunk with coal in Bounty Cove, Hell Gate, in the forepart of July, 1870. I went down under water. I did not read the name of the boat. Mr. Talmage's wrecking-boats were there then. When I went down I found a barge loaded with coal; her stern was about eight fathoms under water; her very stem showed on the water when the tide was very low; she laid bad, pretty well keeled over, so that a man couldn't stand on her deck, but would slide overboard; she had no hatches on that I found. I observed injuries to her hull; she had a large break in her port side, thirty or forty feet from her bow, under her plank-shear, so that a quantity of coal—quite a pile—ran out from this hole, and got into the crevices of the rocks. I couldn't tell how much coal she had in when I saw her; the other hatches seemed full, except the forward one and the one opposite the break.

Q. What proportion was there gone, if you could tell?

A. I can't tell, because I was only looking to see where I could put the chains. I put the chains under her. Where her stern laid there was a small, smooth place, and then along up her sides were rocks like the side of the house; her stern laid on a big rock, and then the ground fell right off in a sheer thirty-five feet. On her port side you had to crawl up on your hands and knees, from near her stern up to where her stem lay. Under her starboard side the rocks were rough, up and down, but you could go over them.

Q. Were you there while Talmage was engaged in raising her?

A. I was all the while his scows and lifting-boats were there. I went when they did, and left when they did.

Q. Tell me how long they were there?

A. I could not tell to a day. I think we left the latter part of
120 July or fore part of August; we went there forepart of July. We did not succeed in raising the boat. We put four chains under

her, and when we got ready to lift, we took in the slack of our chains at low water, which is what we generally do, so as to let the tide lift us. We had the stern lifted off the bottom so that it swung a little. A big steamboat going through the Sound passed us, and caused a swell that made her bow fall off the rock (being swung at the stern) with the sudden surge, and carried away the two forward chains, and she fell over on her port side, very near on her beam ends, with her bow now nearly as low as her stern; that is to say, her bow lays in as deep water as the stern. It is my impression that I went down at the time to see what I could do about picking up the chains, and to see if it was feasible to lift her again. I am pretty sure I went down again the next morning with my diving-apparatus, or within two or three days; we lay there two or three days.

Q. What did you ascertain?

(Objected to; objection sustained; exception.)

Q. To the best of your recollection, please state whether or not, after the parting of your chains, and before you went away, you did or did not go down with your diving-apparatus?

A. I think I did, because I don't know how we could come to the conclusion to leave unless I did.

Question repeated.

(Objected to; objection sustained; exception.)

A. I have been down since, in June, 1871, last June. The boat laid then nearly on her beam ends, off the rock; a little deeper water on her bow than over her stern. I have been thirteen years in wrecking business.

Q. Wouldn't it, in your opinion, have been feasible to have raised her after she fell off the rock, as you have stated?

(Objected to; objection overruled; exception.)

121 A. No, sir; I don't think we could have got the chains under her.

Cross-examined:

I have heard of vessels being raised out of 48 feet of water, not with a cargo on so heavy as this. I might have heard of it, but have no remembrance of it. It could be done if it laid in some places. It depends on the place and the tides, and the shape it lies in, and the situation, and vessels coming upon you. I am not at present in the employ of any one. I have been some five years with Mr. Talmage. We are doing nothing in winter. I expect to go with him in the spring. I mean that the whole depth of water where her stern lay was eight fathoms. She keeled to her port side when I first found her. I don't mean to say that all the coal that had been in her, forward of the break, had run out. There was plenty of coal there. While I was there no coal was taken out. Some had been tonged out before I got there.

Q. In your opinion, how far had the stern been raised from the level of the rock on which it had previously rested when the disaster occurred which you have described?

A. Merely swung from the bottom; just cleared; not more than a couple of feet. I couldn't tell whether one foot or two. No one could tell without going down to measure. It was one of the big Sound steamers that passed by.

Redirect:

Q. What was the position for raising of this boat when you first saw her?

122 A. Very bad; about as bad as you could get her, unless she stood on end; it was so difficult to get the chains to hold on her.

THOMAS C. RAND.

Subscribed and sworn to this 9th day of April, 1872, before me.

GEO. F. BETTS,
U. S. Commissioner.

Adjourned to 16th inst., 3½ p. m.

April 16, adjourned to 30th inst., 3 p. m.

Either party is at liberty to read any portion of the minutes of the trial.

Libellants recall FREDERICK ROBERT:

Q. How soon after the collision did you see any of these barges?

A. Next week; I saw the Pottsville. I had not seen the Hoffman, nor any part of her. I saw the bow of the Pottsville at Hunter's Point, and her hull (the balance of it) in Bounty's Cove. I saw the Reading about two weeks afterwards, what little I did see of her. I saw her caboose on shore below Astoria, and the point of her bow, Samson-post, half way between Bounty's Cove and Hallett's Point. The rest of the Reading was submerged. The collision occurred December 18, 1869.

Q. State whether, after the collision, you took any steps in reference to getting up the Reading, or going after the pieces of the Pottsville, or doing anything to the Hoffman; and if not, why not?

A. I never saw any part of the Hoffman. I went up and examined the bow of the Pottsville at Hunter's Point. It was cut straight off, and the deck gone out of it. The keel and kelsons were cut in two, and

123 the planking. Then I went up, some week or so after, and examined the rest of her hull in Bounty's Cove. I found her bottom side up there on the shore—the remaining portions of the timbers were in her; the oakum was started out of her—she was badly strained. I examined her carefully and came to the conclusion that it would cost more to repair her than she would then be worth. (Objected to; objection overruled; exception.) There was no insurance on either the Pottsville or Reading. The reasons why I came to this conclusion are, that we would have had to get the two ends together on dry-dock, which would have been expensive; they would have had to remain there some time; the boat would have had to be all refastened, new decks and finer works, new kelsons and keel—and when that was all done you would have had a rebuilt boat; it would have taken a good deal of new stuff—outside planking and ceiling, and some new frames probably; all would have had to be recaulked and repainted and re-formed; anchors, chains, and lines were all gone. If her deck was entirely gone, as I had every reason to suppose it was, it would have been cheaper to build a new boat than to repair this. (Objected to; objection overruled; exception.) Some weeks after the Reading was sunk I went up to the Coast Wrecking Company about her—told them (I can't remember who) that I had a boat sunk there in the Gate, and spoke about getting her up. They told me winter was an expensive time to take up that kind of work, and a bad time to raise vessels, on account of ice, currents, storms, &c.; that was the substance of what they said. I directed my clerk to let wreckers know that she laid there, so that they might come and offer to raise her. The agent of the steamboat Fuller called on me; they offered to raise her for $1,200 to $1,500, payable when she was delivered

at some ship-yard with what remained of her cargo in her; I declined that.

Q. State your reason for declining it?

(Objected to; objection sustained.)

124 I offered them, if they would raise her and deliver her at a ship-yard, that I would see they had a fair proportion of what she was then worth; they declined that. Then I had a visit from Mr. Talmage. He offered to raise her for $1,200 to $1,500. I made him the same counter-proposition as to the others, and he accepted it. I was there while Talmage was at work. I couldn't swear how long they were at work; they went there in the spring of 1870. Talmage did not succeed—he does not make any claim for his services. I wish to correct a portion of my testimony: I am not sure that I saw the bow or the Samson-post of the Reading. I have heard it spoken of so often that I had at first the impression I had seen them. I saw a ripple which was said to be over her bow. I am sure I saw her caboose.

Cross-examined:

The bow of the Pottsville was just on the upper side of a crib that had been built out from shore; that piece must have been 20 to 25 feet long; it was cut off straight; I think the bow was all gone from that. I couldn't answer whether her deck-timbers were gone or not. I don't remember seeing them, but I think they must have been there or the sides would have fallen in; the deck was gone, that I know. I never made any disposition of that part of the boat; I allowed it to remain where it laid. I never notified the claimants where this piece laid; the other piece laid outside of some wrecks or old craft, bottom side up, side to the shore; tiptop high water, I judge, covered it; I have seen it covered by water within six inches; at low water it would be nearly bare. I made no sale or disposition of that. This portion was, I judge, 75 to 85 feet long. I never saw the deck of this portion, nor where it should have been, for it was bottom-side up; I dont know the condition of its deck, except from hearsay; it would have needed a new keel throughout, to make a good job of her. A vessel of that class ought to have a single stick

125 for a keel. I never examined the keel of the Pottsville to see if it was a single stick. I did not seek to obtain proposals for rebuilding the Pottsville from any particular person. I never asked any shipwright what it would cost to reconstruct her. I am not a shipwright myself. I have heard of vessels being cut in two, on the ways, to lengthen, but not of barges nor canal-boats. I never went up and sounded with a pole to find where the Reading was. I left the caboose where it laid; made no disposition of that. I went to the office of the Coast Wrecking Co., but can't swear that it was in January, nor in February; it must have been before the first of March; I only went once on this business. I know Captain Merritt. I don't know as he is superintendent; he has charge of their business. I don't think I ever saw him with reference to this matter. I have lived in New York ever since the collision. I couldn't state what the employment was of the man I saw in their office. I don't remember seeing more than one man there; there is generally a crowd in there—captains, wreckers, divers, &c.; my conversation might have been with one of them. I made no efforts to secure their services other than what I have stated. I don't know the name of the man from the Fuller; he did not offer to raise the vessel for any less than $1,200. I don't remember whether I stated to him or not that I was owner of the cargo when I made the counter-proposition; Mr. Talmage made a definite proposition, which I declined; I can't swear to

its precise terms; I have heard his testimony. I made a definite contract with him; he was to go to work, raise the boat and cargo, deliver them at the ways of a yard, and he was to be allowed such fair proportion of the boat and cargo as should be proper, considering his time, expense, and trouble; the contract was no more definite than that. I won't swear that I didn't say to him that I had no authority to make a contract, or to fix a price for raising the vessel. I will swear that I did not say
126 to him that I did not have any authority to make any contract as to raising the vessel. Mr. Benedict gave me authority in our office, shortly after the collision, to make a contract as to raising the coal. I can't swear that any one else was present, but I think Mr. Gladwish was. I can't remember his words—substance was that if we could do anything toward saving the coal when we were raising the vessel, to do it, and he would stand his share of the expense; he authorized me to make such a contract on behalf of the coal as we should make on behalf of the vessel, provided that the amount of coal saved was worth as much or more than the expense of getting it; Mr. Benedict, in that conversation, stated to me that limitation in words. I never offered to any one a direct percentage of the property saved, in case it should be saved, that I remember. I don't think I ever have made any different proposition to any one than the one I made to Talmage, which he accepted

Redirect:

The caboose I saw on shore was all racked, and the door off it; it cost, new, about $40 to $45.

FRED'K ROBERT.

Subscribed before me this 30th day of April, 1872, the witness having been previously sworn.

GEO. F. BETTS,
U. S. Com.

Libellants rest.

Adjourned to May 4th, 1 p. m.

May 4th, adjourned to 11th inst., 1 p. m.

May 11th, adjourned to 17th inst., 1 p. m.

May 17th, adjourned to 25th inst., 1 p. m.

May 25th, summed up and submitted.

127 EXHIBIT 1.—G. F. B.

No. 4269.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
Office, 26 *Exchange Place, New York.*

Shipped, in good order, by the Delaware, Lackawanna and Western Railroad Company, on board the barge called the Pottsville, of , whereof I am master, now lying at Elizabethport, N. J., and bound for Belle Dock, New Haven, two hundred and seventy-two tons Scranton coal, (as per margin,) which I hereby promise to deliver, in like good order, at the aforesaid port of New Haven, (the dangers of the seas only excepted,) unto H. W. Benedict & Co., or their assigns, he or they paying freight for the same at the rate of one and $\frac{2}{100}$ dollars per ton.

In witness whereof I, the master or purser of said vessel, have signed three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Elizabethport, N. J., Dec. 13th, 1869.

JAMES MONK.

(Margin of above bill of lading.)

Cargo as follows:

Lump-coal..... 272 tons.
Freight, at $1.25 per ton..... $340

(Written across the margin in red ink:) "Deduct trimming, sixteen and $\frac{32}{100}$ dollars—$16.32."

128 EXHIBIT 2.—G. F. B.

No. 4352.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
Office, 26 *Exchange Place, New York.*

Shipped, in good order, by the Delaware, Lackawanna and Western Railroad Company, on board the barge called the Reading, of , whereof I am master, now lying at Elizabethport, N. J., and bound for Belle Dock, New Haven, two hundred and twenty-eight and $\frac{17}{20}$ tons Scranton coal, (as per margin,) which I hereby promise to deliver, in like good order, at the aforesaid port of New Haven, (the dangers of the seas only excepted,) unto H. W. Benedict & Co., or their assigns, he or they paying freight for the same at the rate of one and $\frac{25}{100}$ dollars per ton—ten dollars ($10) per day, after four days at Elizabethport.

In witness whereof I, the master or purser of said vessel, have signed three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Elizabeth, N. J., Dec. 15th, 1869.

EDWARD WHITE.

(Margin of above bill of lading.)

Cargo as follows:

	Tons.	Cwt.
Grate	99	05
Chestnut	129	12
	228.	17
Freight, at $1.25 per ton	$286	06

(Written across the margin in red ink:) "Deduct trimming, nineteen and $\frac{74}{100}$ dollars—$19.74."

129 EXHIBIT 3.—G. F. B.

No. 4357.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
Office, 26 Exchange Place, New York.

Shipped, in good order, by the Delaware, Lackawanna and Western Railroad Company, on board the barge called the Reading, of , whereof I am master, now lying at Elizabethport, N. J., and bound for Belle Dock, New Haven, one hundred and $\frac{5}{20}$ tons Scranton coal, (as per margin,) which I hereby promise to deliver, in like good order, at the aforesaid port of New Haven, (the dangers of the seas only excepted,) unto H. W. Benedict & Co., or their assigns, he or they paying freight for the same at the rate of agreed.

In witness whereof I, the master or purser of said vessel, have signed four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Elizabethport, N. J., Dec. 15th, 1869.

EDWARD WHITE.

(Margin of above bill of lading.)

Cargo as follows:

	Tons. Cwt.
Grate	100 05

(Written across the face in red ink:) "Account M. R. Martin, New York.

130 EXHIBIT A.—APRIL 6, 1872.—G. F. B.

[Wm. Murtagh & Co., shipping and commission merchants and steam tow-boat agents, No. 9 Coenties Slip, New York. Inland line of boats, via Canal, for Philadelphia, Baltimore, Wilmington, Del., and all points on the Pennsylvania Canals. Also freights taken for all coastwise ports, steam tow-boats for towing on North and East Rivers and all points on Long Island Sound.]

NEW YORK, *March 11th*, 1872.

SAMUEL STOKELY, Esq.,
Chester, Pa.

DEAR SIR: Please inform me if you are prepared to build canal-boats. If so, let me know what you would charge to build a boat say 22 feet beam; depth, 9 feet; length, about 110 feet over all; planks outside, say 3-inch; kelsons, 14 × 16; beams, 10 inch; frame, not less than 6-inch; about 10-inch from centre to centre; deck-plank 3-inch and 5 clamps; 3-inch to be arched inside, with knees at each beam; to be well fastened with inch-iron; to have rail on deck-block; also high waist forward, and 6 iron cleets on deck, and heavy Samson-post forward; to be well finished, caulked, and painted. This is a rough estimate of what I require, so you can judge that I want a strong, serviceable boat, and if you can give me a reasonable rate for such a boat I will give you an order for
131 one to commence immediately. If she is suitable, I will order some more. Cabin trunk. Hoping to hear from you in a few days,

Yours, resp't.,

WM. MURTAGH.

P. S.—You called at my office some time ago.

EXHIBIT 1.—MARCH 14, 1872.—G. F. B.

CHESTOR, *March 12th*, 1872.

MR. MURTACH:

DER CER: You will find specifecation inclosed. You will pleese exeamin it and see if it sutes your vues.

Judgen from your letter I think it is what you want. It might not bee quite as fool as it might bee.

I can build you one from this specification four Fortey-sevin hundred dollars, but I can build you a canall-boat four less money, but it will only bee a canall-boat, but this will bee a barge.

Yours truly,

SAMUEL STOKLEY.

132 EXHIBIT 1.—MARCH 14.—G. F. B.

[Samuel Stokely, s' ip-carpenter and boat-builder. Scows and boats built of the best Delaware timber.]

CHESTER, DEL. CO., PA., 187 .

Specification four a barge. Lenth 110 ft. over all, 22 ft. wide, 9 ft. deep, single frame 5 in., plum stem flourtimbers to bee 6x8 in., 16 in. apart, top timbers to bee 5x5 at top, and 5x7 at bottom; futtic to bee 5 in. hacmotoc, knee fastned with $\frac{5}{8}$ in. iron; keel to bee 4 in. thick; stem and dedwoods to bee 9 in. thick, well fastened with $3\frac{1}{4}$ iron wailing to bee 3 in. thick, 7 streaks; sides, $2\frac{1}{2}$ in. thick; bilge, 3 in. thick; bottom, $2\frac{1}{2}$ in. thick; all outside fastned with wrot spke clamps, pine, $4\frac{1}{2}$ in.; one $\frac{5}{8}$ bold, and one spike in each timber blow clamp, $2\frac{1}{2}$, pine; center kellson 14x16, pine; side kellson 10x12, fastened with $\frac{3}{4}$ iron; one bolt in flour and one in futtic, making two bolts in each frame; center kellson to have one bolt in each flour timber beams, 8x10 in., twelve beams, each beam to have 5 in. knee under each ende, fastned with 5 five-eight bolts, to have 3 streakes of arch bracing, bolted well with $\frac{5}{8}$ bolts; carling, 4x6; deck, 3 in.; rail, if log waste or set on blocks, it will cost the same, but if stenchion and plank sheer that will cost $150 more; cabin to bee trunk cabin, to be made plain and comfortable; hatches to bee what whatever number required; heavy Sampson post, 5 iron cleats, to bee calked with 2 threds oakum, and paid with pitch; to bee well fastned and finished in a workmanlike maner.

133 EXHIBIT B.—April 6, 1872.—G. F. B.

Form C.—Enrolment, No. 498.

[An act of the Congress of the United States.]

Enrolment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

Charles E. Smith, president, of Philadelphia, Pa., having taken or subscribed the oath required by the said acts, and having sworn that

he, together with the Philadelphia, Reading and Pottsville Railroad Company, are citizens of the United States, sole owners of the ship or vessel called the Reading, of Philadelphia, whereof John H. White is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Chester, Penn., in the year 1862, as appears by carpenter's certificate on file in this office:

And Charles M. Hall, deputy surveyor, having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred $\frac{7}{10}$th feet, her breadth twenty-one $\frac{1}{10}$th feet, her depth nine $\frac{7}{10}$th feet; that she measures one hundred and eighty-nine and $\frac{64}{95}$th tons, viz, capacity under tonnage-deck, one hundred and eighty-nine $\frac{64}{95}$th tons; and that she is a canal-boat; has a head and a stern:

And the said Charles E. Smith, president, having agreed to the description and admeasurement above specified, and sufficient se-
134 curity having been given, according to the said acts, the said canal-boat has been duly enrolled at the port of Philadelphia.

Given under my hand and seal, at the port of Philadelphia, in the district of Philadelphia, this 19th day of November, in the year one thousand eight hundred and sixty-two.

(Signed) WILLIAM HARBESON,
Deputy Collector.

COLLECTOR'S OFFICE,
Philadelphia, Penn., January 17th, 1872.

I certify the within to be a true and correct copy.

Witness my hand and seal this seventeenth day of January, A. D. 1872.

[L. S.] D. F. HOUSTON,
Deputy Collector.

EXHIBIT C.—APRIL 6, 1872.—G. F. B.

Form C.—Enrolment, No. 497.

[An act of the Congress of the United States.]

Enrolment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

135 Charles E. Smith, president, of Philadelphia; Pa., having taken or subscribed the oath required by the said acts, and having sworn that he, together with the Philadelphia, Reading and Pottsville Railroad company, are citizens of the United States, sole owners of the ship or vessel called the Pottsville, of Philadelphia, whereof Robert Tickner is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Chester, Penn., in the year 1852, as appears by carpenter's certificate on file in this office:

And C. M. Hall, deputy surveyor, having certified that the said ship or vessel has one deck and no mast, and that her length is ninty-nine $\frac{2}{10}$th feet, her breadth twenty-one $\frac{1}{10}$th feet, her depth eight $\frac{7}{10}$th feet; that she measures one hundred and sixty-seven and $\frac{21}{95}$th tons, viz, capacity under tonnage deck, 167 $\frac{21}{95}$th tons; and that she is a canal-boat; has a head and stern:

And the said Charles E. Smith, president, having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said acts, the said canal-boat has been duly enrolled at the port of Philadelphia.

Given under my hand and seal, at the port of Philadelphia, in the district of Philadelphia, this 19th day of November, in the year one thousand eight hundred and sixty-two.

(Signed) WM. HARBESON,
Deputy Collector.

COLLECTOR'S OFFICE,
Philadelphia Pa. January 17th, 1872.

I certify the within to be a true and correct copy.

Witness my hand and seal this seventeenth day of January, A. D. 1872.

[L. S.] D. F. HOUSTON,
Deputy Collector.

136 *Form C.—Certified copy.—Enrollment, No.* 477.

[An act of the Congress of the United States.]

Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

Hugh McFadden, of Philadelphia, Pa., having taken or subscribed the oath required by the said acts, and having sworn that he is a citizen of the United States, and sole owner of the ship or vessel called the C. J. Hoffman, of Philadelphia, whereof Hugh McFadden is at present master, and, as he has sworn, is a citizen of the United States, and that the said ship or vessel was built at Philadelphia, Pa., in the year 1867, as appears by carpenter's certificate on file in this office:

And Thomas C. McDowell, deputy surveyor, having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred $\frac{7}{10}$th feet, her breadth seventeen $\frac{7}{10}$th feet, her depth nine $\frac{4}{10}$th feet; that she measures one hundred and thirty-six and $\frac{66}{100}$th tons, viz:

	Tons.	100ths
Capacity under tonnage deck	135	92
Capacity between decks above tonnage deck		74
Total tonnage	136	66

And that she is a barge; has a head and a stern:

137 And the said Hugh McFadden having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said acts, the said barge has been duly enrolled at the port of Philadelphia.

Given under my hand and seal, at the port of Philadelphia, in the district of Philadelphia, this 8th day of November, in the year one thousand eight hundred and sixty-seven.

(Signed) WM. B. JOHNS,
Deputy Clr.

COLLECTOR'S OFFICE,
Philadelphia, Pa., Jan. 16, 1872.

I certify the within to be a true and correct copy.
Witness my hand and seal this sixteenth day of January, A. D. 1872.
[L. S] ALEX. WENTZ, ESQ.,
Deputy Collector.

138 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The petition of Edward White, James Monk, and Patrick F. Lynch respectfully showeth:

That they were captains of the barges Pottsville, Reading, and C. J. Hoffman, which were in tow of the steam-tug Vim, and were sunk by the collision with the steam-propeller Galatea, as hereinafter mentioned.

That there is now pending in this honorable court a suit brought in the name of Frederick Robert and William E. Gladwish, of New York, Henry W. Benedict, Frank W. Pardee, and Henry H. H. Benedict, and Daniel McWilliams against the steam-propeller Galatea, her engine, &c., to recover damages for a collision which occurred on the 18th day of December, 1869, between the said steam-propeller Galatea and the barges above mentioned in tow of the tug Vim.

That the Providence and New York Steamship Company have intervened as claimants of the said steam-propeller, and have filed the usual stipulations in this court.

That your petitioners were respectively owners of certain property and effects which were on board of the barges above-mentioned, and which were totally lost by the collision above stated.

That the value of the property owned and belonging to the said Patrick Lynch, and which was so lost as aforesaid, amounted to the sum of three hundred dollars, or thereabouts; that the value of the property owned by and belonging to the said Edward White, and which was so lost as aforesaid, amounted to the sum of one hundred and sixty-eight dollars, or thereabouts; and that the value of the property owned by and belonging to the said James Monk, and so lost as aforesaid, amounted to the sum of two hundred and five dollars, or thereabouts.

139 That the above-mentioned claims are now owned by your petitioners in the above proportions, and that they are advised that they are entitled to recover and collect the same from the said steam-propeller Galatea.

And your petitioners further show that the said collision was occasioned by the negligence, want of skill, and improper conduct of those navigating the said steam-propeller Galatea, and having the control thereof, and not by or through any fault, negligence, or improper conduct on the part of the persons navigating and having control of the said tug or the said barges, as your petitioners verily believe, and is more fully alleged and set forth in the said libel now on file in the said pending suit; to which libel and allegations therein contained your petitioners would refer.

And your petitioners therefore respectfully pray that, in accordance with the rules and practice of this honorable court, they may be admitted by the court to be heard for their own interests in the res now within the control of the court in the above-mentioned cause, and represented by the said stipulation of the claimants therein, and that they may be allowed to prosecute as co-libellants in the said suit, and to share the benefit of the said stipulation in the proportion of their respective claims

as they may be entitled to receive by the proof from the owners of the steam-propeller Galatea, and the stipulation in the said bond for losses occasioned by the said collision, and that they may have such other and further relief herein as in law and justice they may be entitled to receive.

EDWARD WHITE.
JAMES MONKS.
PATRICK F. LYNCH.

PLATT, GERARD & BUCKLEY,
Attorneys for Petitioners.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

140 James N. Platt, being duly sworn, deposes and says that he is one of the proctors for Edward White, James Monks, and Patrick F. Lynch, the petitioners within named; that the foregoing petition by them subscribed is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes to be true.

J. N. PLATT.

Sworn to before me this 16th day of March, 1872.
[SEAL.] HENRY F. LIPPOLD,
Notary Public, N. Y. County.

At a stated term of the district court of the United States for the southern district of New York, held at the city of New York on the 18th day of March, 1872.

FREDERICK ROBERT AND WILLIAM E. GLADwish and others
against
THE PROPELLER GALATEA, &C.

On motion of James N. Platt, esq., advocate for libellants, and on the consent of Messrs. Evarts, Southmayd & Choate, proctors for the claimants:

It is ordered that Edward White, James Monk, and Patrick F. Lynch be admitted to be heard, for their own respective interests, in the res now within the court in this action, and represented by the stipulation of the claimants herein, and their sureties entered into and filed
141 in accordance with the rules and practice of this court, and that they may be allowed to prosecute as co-libellants in this suit, and to share the benefit of the said stipulation, in the proportion of the compensation which they may respectively be adjudged to be entitled to receive from the owners of the steam-propeller Galatea, and the stipulations in the said bond for the losses occasioned by the collision in the libel set forth.

And it is further ordered that, under the allegations of the libel on file in this action, they be allowed to introduce, in support of their several demands, the evidence heretofore taken in this action before the court and before the commissioner to whom it has been referred, to compute the damages sustained by the libellants; the answer of the claimants and respondents, and all evidence given on their part upon the question of responsibility for the collision, to be applicable as against the said parties now intervening as co-libellants, and their claims and interests to be deemed put in issue by the answer, and the said parties

intervening to be bound by the event of this cause between the principal parties thereto.

SAML. BLATCHFORD.

Commissioner's report.

District court of the United States for the southern district of New York.

FREDERICK ROBERT ET AL.
vs.
THE PROPELLER GALATEA.

142 In pursuance of a decretal order made in the above-entitled cause on the 14th day of June, in the year of our Lord one thousand eight hundred and seventy-one, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for damages sustained by them by the collision in the pleadings mentioned, and to report thereon to this court with all convenient speed:

I, Geroge F. Betts, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellants and for the claimants, and have taken and examined the testimony offered in support of the libellants' claim, and in opposition thereto, and do find that the libellants are entitled to recover the total values of the barges Pottsville, Reading, and C. J. Hoffman, and of their cargoes.

And that at the time of the collision the value of the Pottsville was	$2,000 00
Of the Reading	2,000 00
" C. J. Hoffman	3,000 00
" fittings of the C. J. Hoffman	150 00
And of the cargo on the Pottsville and Reading	2,591 60
Of the freight on these two cargoes	475 67
" " the cargo of the Hoffman	171 68
Of the towage of the Hoffman	11 43
" lines of the tug Vim, (lost)	70 00
" personal effects of White	168 00
" " " Monk	205 00
" " " Lynch	225 00
	$11,068 38
Interest from December 16, 1869, to January 20, 1873, at six per cent	2,055 03
	$13,123 41

143 And that the damages sustained by the libellants by said collision amount in the total to thirteen thousand one hundred and twenty-three dollars and forty-one cents, ($13,123.41.)

All which is respectfully submitted.

Dated January 20, 1873.

GEO. F. BETTS,
U. S. Commmissioner.

District court of the United States for the southern district of New York.

FREDERICK ROBERT AND OTHERS
agst.
THE STEAM-PROPELLER GALATEA, &c.

The libellants, Frederick Robert and William E. Gladwish, except to the report of the commissioner herein, bearing date the twentieth day of January, 1873, upon the following grounds, viz:

First. Because the said commissioner hath not allowed a sufficient sum as the value of the boats Pottsville and Reading at the time of the collision.

Second. That under the evidence in the cause the said commissioner should have allowed at least the sum of six thousand dollars as the value of the said barge at the time of the collision.

The libellant McWilliams excepts to the report of said commissioner, for that—

144 First. He hath allowed only three thousand dollars as the value of the barge C. J. Hoffman at the time of the collision, which was less than her value.

Second. That said commissioner should have allowed at least the sum of four thousand three hundred dollars as the value of said barge.

PLATT, GERARD & BUCKLEY,
Proctors for Libellants.

T. C. T. BUCKLEY, *Advocate.*

United States district court, southern district of New York.

FREDERICK ROBERT ET AL.
vs.
STEAM-PROPELLER GALATEA, HER TACKLE, apparel, &c.

Exceptions of claimants to the report of commissioner.

The Providence and New York Steamship Company, claimants of the propeller Galatea, her engines, tackle, apparel, and furniture, except to the report of the commissioner herein, bearing date the 20th day of January, 1873, upon the following grounds, viz:

First. To the allowance of $2,000 as and for the value of the barge Reading, for that no proper or suitable efforts to save the said
145 barge after the collision were made by the libellants, and there was no evidence showing that she might not have been raised and repaired for a sum less than her value when repaired; and for that the final loss of said barge was occasioned by the negligence, fault, and improper conduct of the libellants in reference to the same subsequent to the collision.

Second. To the allowance of $2,591.60 as and for the value of the cargo on board the Pottsville and Reading, for that the cargo on board the Reading, the value of which is included in the said sum, might have been raised and saved for an amount less than its value when saved, and no proper or suitable efforts to raise or save the same were made on behalf of the libellants, and the same was finally lost by reason of the negligence, fault, and improper conduct of the libellants in reference thereto after the collision.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Claimants.

146 At a stated term of the district court of the United States of America for the southern district of New York, held at the city-hall, in the city of New York, on Saturday, the 1st day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the Hon. Samuel Blatchford, district judge.

FREDERICK ROBERT, WILLIAM E. GLADWISH, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel MacWilliams, Edward White, James Monk, and Patrick F. Lynch,
vs.
THE STEAM-PROPELLER GALATEA, HER engines, tackle, &c., the Providence and New York Steamship Company, claimant. } 23212.

This case having been heard upon the exceptions taken by the libellants and claimants to the commissioner's report herein, and said exceptions of both parties having been overruled, now, on reading the report on file, dated January 20th, 1873, of George F. Betts, esquire, United States commissioner, to whom the above matter was referred, by which there is reported due the libellants, for damages by collision and interest to date of the report, the sum of thirteen thousand one hundred and twenty-three dollars forty-one cents, on motion of Platt, Gerard & Buckley, proctors for the libellants, it is ordered that

147 the report be in all things confirmed, and that the libellants recover in this action against the Steam-propeller Galatia, &c., the amount reported due, with interest thereon from date of said report to date of this decree, amounting to thirty dollars twenty cents, together with their costs to be taxed, which have been taxed at the sum of three hundred and twenty-five dollars twelve cents, and that said Steam-propeller Galatea, &c., be condemed therefor.

And on like motion it is further ordered that, in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be, and the same is hereby, entered against the Providence and New York Steamship Company, the principal, and Cornelius H. Delamater and Isaac Odell, the sureties on their bond given on the discharge of the property arrested, for the sum of thirty-six thousand dollars, the amount of their said bond executed on discharging the said steam-propeller, &c., from custody.

And on like motion it is further ordered that, unless an appeal be taken from this decree within the time limited and prescribed by the rules of this court, the libellants have execution to enforce satisfaction of this decree.

SAML. BLATCHFORD.

PLATT, GERARD & BUCKLEY,
Proctors for the Libellants.

148 United States district court, southern district of New York.

FREDERICK ROBERT ET AL.
vs.
THE STEAM-PROPELLER GALATEA, her engine, tackle, &c.

Take notice that the claimants intend to, and do hereby, appeal to the next circuit court of the United States to be held in the southern dis-

trict of New York from the final decree entered in the above-entitled cause on the 1st day of February, 1873, and from each and every part of said decree.

New York, February 6, 1873.

Yours, &c.,

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Claimants.

To GEORGE F. BETTS, Esq.,
Clerk of U. S. District Court.
Messrs. PLATT, GERARD & BUCKLEY,
Proctors for Libellants.

149 Circuit court of the United States, southern district of New York.

FREDERICK ROBERT, WILLIAM E. GLADWISH, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch, libellants, appellees,
against
THE PROPELLER GALATEA, HER ENGINE, tackle, apparel, and furniture, the Providence and New York Steamship Company, claimants and appellants.

To the honorable the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

The appeal of the above-named appellants respectfully showeth, that on the 23d day of December, in the year one thousand eight hundred and sixty-nine, Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, and Daniel McWilliams, six of the above-named libellants, exhibited their libel in the district court of the United States for the southern district of New York against the said propeller Galatea, her engine, tackle, apparel, and furniture, praying, among other things, for the reasons set forth in said libel, that
150 the said court would pronounce for the claims in said libel set forth, and would condemn the said propeller and all persons intervening for their interest therein with costs.

That on the said 23d day of December, one thousand eight hundred and sixty-nine, the Providence and New York Steamship Company appeared in said suit and entered and filed their claim to the said propeller and a stipulation for the costs of said suit, pursuant to the course and practice of said district court, and a bond in the sum of thirty-six thousand dollars, according to the act of Congress in that behalf, passed March 3d, 1847, and according to the course and practice of said district court.

That on the 26th day of January, one thousand eight hundred and seventy, the said claimants of the said propeller filed their answer to the said libel in said district court, praying that the said libel be dismissed and the said libellants condemned in costs.

That the said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on the 17th, 18th, 19th, 22d, 23d, 24th, 25th, and 26th days of May, one thousand eight hundred and seventy-one, upon the testimony and proofs then adduced by the respective parties; and the said judge, having advised thereon, afterwards, on

the 14th day of June, one thousand eight hundred and seventy-one, made a decree or sentence in said cause, whereby it was sentenced and decreed that the several libellants recover against the said steam-propeller Galatea, her tackle, &c., the damages by them sustained by reason of the collision in the libel set forth, with their costs to be taxed, and that it be referred to a commissioner of said district court to ascertain the amount of such damages due to said libellants severally and report thereon to said district court.

That, under the said decree, reference was had to George F. Betts, esquire, a commissioner of the said court, to ascertain the amount of such damages.

151 That pending such reference, and on the 18th day of March, one thousand eight hundred and seventy-two, by an order of the said district court, the above-named Edward White, James Monk, and Patrick F. Lynch were made co-libellants with the persons named in the libel in said cause.

That by the report of said commissioner, which was filed on the 20th day of January, one thousand eight hundred and seventy-three, it was reported to said court that the damages sustained by the libellants by the collision in the libel set forth, with interest thereon to said 20th day of January, one thousand eight hundred and seventy-three, amounted to thirteen thousand one hundred and twenty-three dollars and forty-one cents, to which report the said claimants and said libellants, on the said 20th day of January, one thousand eight hundred and seventy-three, filed certain exceptions.

That on the 1st day of February, one thousand eight hundred and seventy-three, the said exceptions of said claimants and libellants respectively were overruled, and the said report confirmed by said district court by the final decree thereof, by which final decree it was adjudged that the said libellants recover of the said propeller Galatea, &c., the aforesaid sum of thirteen thousand one hundred and twenty-three dollars and forty-one cents, with interest and costs, amounting altogether to the sum of thirteen thousand four hundred and seventy-eight dollars and seventy-three cents, and the said propeller was condemned therefor; and in pursuance of the act of Congress passed March 3d, 1847, summary judgment was entered against the Providence and New York Steamship Company, the principal, and Cornelius H. Delamater and Isaac Odell, the sureties on the bond given on the discharge of the property arrested, for the sum of thirty-six thousand dollars, the amount of their said bond.

152 And these appellants are advised and insist that the said decree is erroneous, inasmuch as said libellants were not entitled to said damages, or any damages, but said claimants were entitled to have said libel dismissed with costs in that behalf.

And these appellants, for these and other reasons, appeal from the whole and each and every part of said decree in favor of said Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch, to the next circuit court to be held in said district, and upon the said appeal the said libellants intend to have said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court, and they pray that the said decree may be reversed, or such other decree thereupon be made as to said circuit court shall seem just, and that the

appellees may be condemned to pay to the appellants their costs and damages in the premises.

New York, February 14th, 1873.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Appellants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Wm. R. Montgomery, being duly sworn, says that on the fourteenth day of February, 1873, he served a copy of the foregoing petition of appeal upon Platt, Gerard & Buckley, proctors for libellants in the within-entitled action, at their office, No. 45 William street, in the city of New York, by delivering to and leaving with the person in charge of said office, at the time aforesaid, a copy of said petition. And further this deponent saith not.

WM. R. MONTGOMERY.

Sworn to before me this 14th day of February, 1873.

[SEAL.] PRESCOTT HALL BUTLER,
Notary Public, N. Y. County.

153 Know all men by these presents, that we the Providence and New York Steamship Company, Edwin Hoyt, and William Brenton Greene, are held and firmly bound unto Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch in the sum of twenty-seven thousand dollars, to be paid to the said Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch, their and each of their executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the Providence and New York Steamship Company, as appellant, has appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the first day of February, 1873, in a suit in which Frederick Roberts and others above named are libellants against the propeller Galatea, her engine, tackle, apparel, etc., the said the Providence and New York Steamship Company, claimants:

Now, therefore, the condition of this obligation is such that if the above-named appellants, the Providence and New York Steamship Company, shall prosecute said appeal with effect, and pay all damages and costs which shall be awarded against it as such appellant therein if it shall
154 fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

PROVIDENCE AND NEW YORK STEAMSHIP COMPANY.
By A. S. GALLUP, *Secretary.* [L. S.]
EDWIN HOYT. [L. S.]
WM. BRENTON GREENE. [L. S.]

Sealed and delivered and taken and acknowledged this 12th day of Feb., 1873, before me.

[SEAL.] PRESCOTT HALL BUTLER,
Notary Public, N. Y. County.

UNITED STATES OF AMERICA,
Southern District of New York, ss :

Edwin Hoyt and William Brenton Greene, the persons described in and who executed the foregoing undertaking, being duly sworn, do depose and say, severally, that he resides in the southern district of New York, the said Edwin Hoyt at No. 94 Fifth avenue, and the said Wm. Brenton Greene, at No. 54 West 14th street, in the city of New York; that he is worth the sum of twenty-seven thousand dollars over and above all his just debts and liabilities.

EDWIN HOYT.
WM. BRENTON GREENE.

Sworn to this twelfth day of February, A. D. 1873, before me.
[SEAL.] PRESCOTT HALL BUTLER,
Notary Public, N. Y. County.

This bond approved as to form and amount and sufficiency of surety. Dated New York, February 15, 1873.

SAML. BLATCHFORD, *D. J.*

I certify that Edwin Hoyt and Wm. Brenton Greene, whose
155 names are subscribe to the within bond, acknowledged to me this date that they signed said stipulation or bond.

JOHN A. OSBORN,
U. S. Commissioner.

N. Y., *Feb. 15th*, 1873.

FREDERICK ROBERT ET AL., LIBELLANTS,
agst.
THE PROPELLER GALATEA, HER ENGINE, ETC., Providence and New York Steamship Company, appellant.

SOUTHERN DISTRICT OF NEW YORK, *ss :*

EDWIN HOYT, being sworn as one of the sureties in above case on appeal, says:

I reside at 94 Fifth avenue, N. Y. City. I own real and personal property in the city of New York. I own the lot and stable between Broadway and Fifth avenue and 19th street, No. 8, I think, worth $45,000; it is free of all incumbrance. I own other real estate in the city; the house and lot on Fifth avenue, 94 Fifth avenue, worth 30 to 40,000 dollars. I am worth $30,000 over all my just debts and liabilities, including the liabilities of Hoyt, Sprague & Co.

EDWIN HOYT.

Subscribed and sworn to before me this 15th day of Feb. A. D. 1873.
JOHN A. OSBORNE,
U. S. Commissioner.

156 WILLIAM B. GREENE, sworn, says:

I am a resident and householder in the city of New York, 54 West 14th street. I own no real estate anywhere; my property consists of the assets, or my interest in the assets of the mercantile firm of Hoyt, Sprague & Co.; I have no other property except horses and carriages. My interest in Hoyt, Sprague & Co., at the last estimate, made a few months ago, was $170,000; that estimate was made by all the members

of the firm; the firm do a business of about $10,000,000 per year, and subject to large liabilities. I have considered these liabilities in estimating the value of my interest.

WM. B. GREENE.

Subscribed and sworn to before me this 15th day of February, 1873.
JOHN A. OSBORN,
U. S. Commissioner.

Counsel for libellants object to Mr. Greene as surety, on the ground that he has no other property than such as is employed in his commercial business, and subject to commercial losses.

JOHN A. OSBORN,
U. S. Commissioner.

157 U. S. district court.

FREDERICK ROBERT AND OTHERS
vs.
THE PROPELLER GALATEA, HER ENGINE, &C.

BLATCHFORD, J.:

As the steam-tug Vim, a propeller, with three barges loaded with coal in tow of her, was proceeding from New York through Hell Gate, on a voyage to New Haven, Connecticut, at about 5½ o'clock a. m. on the morning of the 18th of December, 1869, she encountered the steam-propeller Galatea, then on a voyage from Providence to New York, directly off Negro Point, and between that and Pot Rock. The barges were lashed side by side with the Vim; the barge on the port side of the Vim was the Pottsville; on the port side of the Pottsville was the barge C. J. Hoffman; on the starboard side of the Vim was the barge Reading. The Vim, the Reading, and the Pottsville belonged to the libellants, Robert and Gladwish; the C. J. Hoffman belonged to the libellant, McWilliams; the coal on board of the Reading and the Pottsville belonged to the libellants, Benedict, Pardee, and Benedict. A collision ensued, which resulted in the loss of the three barges and their cargoes, and this suit is brought to recover for such loss, except as to the cargo of the C. J. Hoffman. The tide was at the middle of the flood, running with the Vim; it was not yet daylight; the night was clear, and there was some moonlight. The Vim was 70 feet long and 17 feet wide; the barges were from 100 to 115 feet long, and carried an
158 average of 300 tons of coal each; the Galatea was 245 feet long and 54 feet wide, and of 1,566 tons burthen. The starboard bow of the Galatea, a few feet abaft her stem, came in contact with the stem of the C. J. Hoffman, and the stem of the Galatea came in contact with the port bow of the Pottsville, a few feet abaft the stem of the Pottsville. The Vim was not hit by the Galatea. Whether the Reading was hit by the Galatea is not clear. The barges projected ahead of the Vim; the Pottsville projected ahead of the C. J. Hoffman. As the result of the collision, the C. J. Hoffman and the Pottsville sank immediately, their bows being opened and their cargoes of coal being spilled out as the water rushed in, and their bows sank. The Reading got adrift, and was soon picked up by the Vim and towed a short distance, but she was so injured as the result of the collision that she shortly sank.

The libel avers that the Galatea saw the lights of the Vim when the

Vim was opposite Astoria, and when the Galatea was on the east side of Ward's Island, and had not yet arrived at Negro Point; that while the vessels were in these positions the Vim blew one long whistle for each vessel to keep to the right; that such signal was answered by one long whistle from the Galatea; that when the Vim had got just above Hallett's Point the Galatea blew one long whistle, which was answered from the Vim; that the Vim continued her course with her helm as far to port as was safe; that the rudder of the Galatea worked imperfectly through an accident to her steering apparatus, and her propeller and keel had sustained injuries, and she was unable to be properly navigated in that part of the river in view of the tide and other dangers of that navigation; that owing to such defects and the want of proper care and skill on the part of those engaged in navigating the Galatea, the collision occurred; and that it was caused by fault and negligence or the want of ordinary care and skill on the part of those engaged in navigating the Galatea, and not by the fault, negligence, or want
159 of care of those in charge of the tug or of the tow. The libel avers that the collision took place at or about Pot Rock, and while the tug and her tow were heading about east by south.

The answer alleges that the Vim and barges drifted down upon the Galatea and struck her, when she was not moving towards them, but had stopped and was backing her engine, after perceiving the danger of collision; that the collision occurred not at Pot Rock, but about abreast of Negro Point, very near the shore; that the barges struck the Galatea on her starboard side, a little abaft her stem and thereby turned her around, with her stern towards the shore, and the full force of the tide bearing upon her starboard side, so that her headway was lost, and she was drifted backward by the tide; that the Galatea and the Vim saw each other while the Galatea was abreast of Ward's Island, before arriving at Negro Point, and while the Vim and her tow was abreast of Hallett's Point or nearly so; that while the vessels were in these positions the Galatea blew one long whistle for each vessel to keep to the right; that the Vim answered by one long whistle; that the claimants have no knowledge of any signal prior to the one first given by the Galatea and answered by the Vim when she was about abreast of Hallett's Point; that after such answer by the Vim, the Galatea put and kept her helm to port and kept to the right, very close to the shore on the right, or north or northeast side, and as close to the shore as it was at all safe or practicable for her to keep, and was in such position until and at the time of collision; that the Vim did not, after her answering signal, continue or keep her course to the right, with her helm as far to port as was safe, or in any wise; that there was ample room for her, with her tow, had she continued her course to the right, as she ought to have done, to pass the Galatea far to the southward of her and without coming near her, but, instead of keeping to the right, on the south-
160 ward, the Vim with her tow came across, very near to the north or northeast shore, on her left; and that when the collision occur'ed, the Galatea was so close to the shore on the north or northeast, which was her right side, that on the sheer or turn which was caused to her on her bow being struck by the barges her stern actually touched the rocks on the shore. The answer also alleges that the collision was wholly attributable to the Vim with her tow having gone to the left instead of the right; that her doing so was either willful or gross mismanagement, or was owing to her having a tow heavier than she had strength or capacity to manage, and consequently becoming unmanageable and being drifted out of her course by the force of the tide; that as soon as the

fact that the Vim and her tows were drifting or coming out of their proper course and towards their left, and that there was danger of a collision, was discovered or discoverable on board of the Galatea, she keeping as close as possible to the north or northeast shore, her engine was slowed and stopped, the proper movements for backing were made, and all possible steps and precautions were taken to avoid a collision; that it occur'ed owing to the Vim and her tow coming and being carried so far out of their proper course, and so close to the north or northeast shore, which the Galatea was hugging, and could not be avoided by any action on the part of the Galatea; that the steering apparatus of the Galatea was not disabled, and her rudder did not work imperfectly, and she had not sustained injuries to her propeller or her keel, so that she could not be properly navigated; and that the collision was not due to any fault, misconduct, or negligence on the part of the Galatea.

A great portion of the testimony taken on the trial was devoted to two points: the question whether the Vim could without great peril have gone to the southward of Pot Rock and to the right of the true tide; and the question whether there was any difficulty in steering the Galatea, arising from injuries to her propeller, her keel, and the
161 support of her rudder which she had sustained two days previously by striking a reef of rocks off Tenth street, New York, in the East River. The evidence satisfactorily establishes that the Vim, with her tows, could not, at half-flood, have properly or without peril gone to the southward of Pot Rock or to the right of the true tide. It also establishes that there was no injury to the steering apparatus, or rudder, or propeller, or keel of the Galatea which impaired or affected the facility of steering her. The case is, therefore, on the libel, left to the general allegation therein of fault and negligence and the want of proper care and skill on the part of those engaged in navigating the Galatea.

The testimony on the trial altogether negatives the statements in the answer that it was the striking of the barges against the starboard side of the Galatea that turned her around with her stern to the shore, and that her headway was lost because she was turned around with her stern to the shore, and because the full force of the tide then bore upon her starboard side, and that on a sheer or turn caused to the Galatea by the striking of her bow by the barges, her stern actually touched the rocks on the shore. The evidence shows that when the Galatea had just passed Negro Bluff she saw the lights of the Vim across the land at Negro Point, the Vim being then about abreast of Flood Rock; that the Galatea then gave one whistle; that the Vim replied by one whistle; that the Galatea shortly afterwards rang one bell and slowed; that her helm being amidships, she kept it so till she reached Negro Point, when she hove it hard-a-port; that the vessels continued to approach each other until they had arrived within 500 or 600 feet of each other, when, the Galatea seeing the Vim and her tows coming rapidly with the tide, and presenting the port side of the port tow to view, the Galatea's engine was stopped; that shortly afterwards the engine of the Galatea was reversed; that as soon as the back motion of the engine com-
162 menced, her wheel being still kept hard-a-port, her head began to fall off to the south of west, and continued to fall off more and more rapidly as the tide began to take effect on her starboard bow, until, by the time of the collision, the head of the Galatea had fallen off four or five points. Her pilot says that he hauled up around Negro Point by porting to a little north of west. A falling off of from four to five points from that would bring her head, at the time of the collision, to

southwest or southwest by south. The course of the tide was about east. The heads of the Vim and her tows and of the Galatea were at about right angles to each other at the time of the collision. This would make the Vim and her tows head then southeast or southeast by east. The master of the Galatea says that the Vim and her tows headed about east southeast, a variation to the east of from one to two points, and the pilot of the Galatea says that the Vim and her tows headed south southeast, a variation to the south of from two to three points. The evidence also shows that the Galatea continued backing for some time after the collision, and that, drifting with the tide on her starboard side, she touched bottom finally to the eastward of Negro Point with her stern. It is fully established that it was the backing of the Galatea before the collision and not the blow of the collision which turned the Galatea athwart of the tide; that she, a vessel 245 feet long was, before the collision, turned across the tide so that she was at an angle to it of about 45 degrees, in a channel-way where the width of the tide where vessels go between Pot Rock and Negro Point is about 300 feet; that her headway was lost by her stopping and by the force of the opposing tide and by her backing, and not by her being turned around as the result of the backing or by the effect of the tide on her starboad side, and that she did not touch any rocks through any effect produced on her by the collision.

163 The contention on the part of the Galatea is that the Galatea was on the northerly edge of the true tide off Negro Point, and at the place where she began to back, and as far to her right as she could safely go; that she had left nearly the whole width of the true tide to her left for the passage of the Vim and her tows; that the Vim and her tows came drifting down with the tide, on the northerly edge of the true tide, and directly in the course of the Galatea, in violation of the agreement made by the signal-whistles, heading indeed to the eastward and southward, but making no progress in that direction because the Vim had not power enough to control the load she was towing; that before the Galatea began to back a collision was inevitable; that if she had not backed, she would have struck the C. J. Hoffman about midships on the port side of the latter, and would probably have destroyed the Vim herself as well as all the barges; that the backing of the Galatea was a proper movement and mitigated the force of the collision; that she would have been in fault under the statute if she had not reversed, and that even if her backing was an error of judgment, it was not a fault, because it was a movement made in the moment of peril to avoid a collision brought about by the fault of the Vim in keeping to the north after she had agreed to keep to the south.

On the part of the libellants it is contended that the Galatea knew that the Vim could not pass to the southward of Pot Rock, and could not stop her headway when going with such a tide, and that the vessels would meet at about Pot Rock; that, therefore, the greatest caution was required on the part of the Galatea; that it ought to have been apparent to the Galatea, very soon after the Vim responded to her signal, that if she kept on, merely slowing, she would meet the Vim at or near Pot Rock, in about the narrowest part of the tide-way; that, therefore, the Galatea, going against the tide, and so having control of herself, ought not merely to have slowed before reaching Negro Point, but

164 ought to have stopped entirely before reaching there; that she could have safely done so; that, although her wheel was ported at Negro Point, it was so ported only to turn the Point; that such porting did not carry her to the northerly edge of the true tide; that she

was not north of the middle of the true tide when she began to back; and that she was in fault in throwing herself across the tide by backing.

It is impossible to determine the question of the fault of the Galatea without first considering the question of the fault of the Vim. The Vim had her proper lights set and burning, her tow was properly made up and fastened to her, and it is shown to have been, in weight and burden, not equal to what she was in the habit of carrying safely through Hell Gate. She had a right to go through at half-flood tide, and it was not unusual or improper to do so. If it required more care and caution than at any other stage of the flood-tide, or than at slack water, that fact was or ought to have been known to the Galatea, and she knew when she whistled that the Vim was a tug with tows coming with the flood tide that was running at the rate of seven knots an hour. When the Vim responded to the whistle of the Galatea, the engine of the Vim was slowed, and her helm and the helms of her barges were ported, and soon afterwards, and when the position of the Galatea was seen, the engine of the Vim was stopped and reversed. I think the weight of the evidence is that the Vim and her tows were as far towards the southerly edge of the true tide as they could be required to go in the dangerous and intricate navigation of the strait. If there was not room to the north for the Galatea to pass in safety, then it was the duty of the Galatea not to have allowed herself to meet the Vim where she did meet her. The Vim was going with a seven-knot tide, and could not stop. The Galatea was a powerful steamer, going against the same tide, and could have stopped and remained in a line with the tide at a point much farther to the eastward, and where the channel was wider, and where she could have hauled
165 to a farther distance to the north from the southerly edge of the true tide, and she could have refrained from presenting her starboard side to the action of the tide. The fact that the Galatea was, at the time of the collision, heading about southwest, while the tide was running about east, and that the tide-way was about 300 feet wide, and that the Galatea was 245 feet long, and that the extreme port bow of the extreme port barge struck the starboard side of the Galatea as far forward on that side as about six feet aft of the stem of the Galatea, is satisfactory evidence, to my mind, that the Vim and her tows were well over to the southerly edge of the true tide, and as far over as could be required of them. I can see no fault on the part of the Vim. This being so, the conclusion necessarily follows that the Galatea was in fault, either in not stopping sooner than she did or in throwing herself athwart the tide to the southward, or in not keeping to the northerly edge of the true tide, or in not keeping her stem to the north of west, or in all of these particulars.

There must be a decree in favor of the several libellants, with costs, with a reference to a commission to ascertain the damages sustained by them severally by meaus of the collision.

E. H. Owen and T. C. T. Buckley, for the libellants; J. H. Choate, for the claimants.

I certify the foregoing to be a true copy of the original decision rendered by the Hon. Samuel Blatchford, U. S. district judge, in the within-entitled cause.

New York, June 15th, 1871.

GEORGE F. BETTS, *Clerk.*

Printed matter correct.

166 SOUTHERN DISTRICT OF NEW YORK, *ss*:

A. W. Evarts, of the city of New York, being duly sworn, doth depose and say that he has compared the foregoing printed copy of "apostles" in the case of Frederick Robert et al. vs. The Steamship Galatea, &c., with the original papers on file in the office of the clerk of the district court of the United States for the southern district of New York, and that the same is a true copy of such original papers; and further saith not.

A. W. EVARTS.

Sworn to before me this 11th day of April, 1873.
[NOTARIAL SEAL.] PRESCOTT HALL BUTLER,
Notary Public, N. Y. County.

(Endorsed:) "Apostles." Filed April 12, 1873.

167 *Testimony taken in circuit court.*

U. S. circuit court.

FREDERICK ROBERT ET AL.
vs.
STEAM-PROPELLER GALETEA, HER ENGINES, &C.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this tenth day of April, in the year of our Lord one thousand eight hundred and seventy-three, I, Kenneth G. White, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Eugene Brando, to testify and the truth to say,
168 on the part and behalf of the appellants, in a certain suit or matter of controversy, now depending and undetermined in the circuit court of the United States for the southern district of New York, at , wherein Frederick Robert et al. are libellants and appellees, and the Steam-propeller Galatea is respondents and appellants.

And the said EUGENE BRANDO, being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Eugene Brando, and he did thereupon depose, testify, and say as follows, viz:

Q. 1. Where do you reside, and what is your business?

A. Reside at Athens, N. Y.; am a fireman; have been on great many boats.

Q. 2. How long have you followed that business?

A. For six or seven years.

Q. 3. Were you fireman on the tug Vim in December, 1869, on the 18th, when she came in collision with the propeller Galatea, in Hell Gate?

A. Yes, sir.

Q. 4. How long had you been on her, as fireman, prior to that?

A. About two or three months, I think.

Q. 5. Do you know what time in the day the collision took place about?

A. In the morning; couldn't tell the exact time; somewhere about four or five o'clock.

Q. 6. Who was engineer of the boat?

A. Christopher Brooks.

Q. 7. Where on the boat were you at the time of the collision?

A. I was in the engine-room when they first struck.

Q. 7. How long had you been in the engine-room before they struck?

A. It was a very short time; it might have been a couple of minutes.

Q. 9. Where were you before you were in the engine-room?

169 A. I was in the fire-room, firing, which was my place.

Q. 10. How far was that from the engine-room, and how were they connected?

A. Not more than six feet. I had to come up a short ladder to the deck, and into the door of the engine-room.

Q. 11. Were the doors of both rooms open?

A. Yes; we generally have them open, unless it is rainy weather.

Q. 12. What led you to go in from the fire-room to the engine-room? (Objected to as improper.)

A. When I came on deck I saw the Galatea coming round the point in Hell Gate, and whistles were blowing, and so I went within. I thought we might have to stop.

Q. 13. Had you heard some noise before you came out of the fire-room? If so, what was it?

A. No, sir; I don't know that I had.

Q. 14. When you went into the engine-room whom did you find there?

A. The engineer.

Q. 15. What was he doing there?

A. He was sleeping—lying down on the locker.

Q. 16. State what happened from the time you went into the engine-room until the vessel stopped.

A. I heard two bells to stop her, and I stopped her.

Q. 17. What did you do to stop her?

A. I shut the steam off and reversed the lever.

Q. 18. Did you unhook the engine?

A. No, sir.

Q. 19. Explain exactly what you did.

A. I shut the steam off with the throttle, and then I reversed the lever.

Q. What next happened?

170 A. I got two bells to let her go back, and a single bell to let her go back lively, and I gave Mr. Brooks a jerk, and I told him to let her go back. I thought something was coming into us. Then he jumped up and gave her back motion, and I ran out of the engine-room on deck.

Q. 21. Did you give Mr. Brooks a jerk before or after the single bell rang?

A. Well, sir, I couldn't swear positive; the bells came so right together.

Q. 22. Was it before or after the bell to back?

A. After the bell to back.

Q. 23. Up to the time you gave him the jerk, had he continued lying on the locker asleep?

A. He jumped up as soon as I jerked him up. To that time he was lying on the locker with his eyes shut.

Q. 24. How quick after Brooks got up did you jump out of the engine-room on to the deck?

A. Just as soon as I got him I was on deck.

Q. 25. How soon after you got out on deck before the boats struck?

A. She must have struck right away, as we were heeled way over when I got on deck.

Q. 26. When you got into the engine-room was the steam already shut off in whole or in part?

A. The throttle was wide open before I shut it off.

Q. 27. Did you shut it wholly off?

A. Yes, sir.

Q. 28. What was the usual signal to slow?

A. One bell.

Q. 29. What was the usual signal to stop?

A. Two bells.

Q. 30. What happened after you got on deck?

A. I went to work trying to get the lines clear of the barges.

Q. 31. In what employ are you now?

A. I engaged just before I came down to go in the tug-boat Storm.

Q. 32. When had you last been in the engine-room before the time you have described?

A. I don't remember.

171 Cross-examined:

Cross-q. 33. What wages were you getting then?

A. $40 a month.

Cross-q. 34. What were you hired for?

A. Fireman.

Cross-q. 35. What did you do as fireman?

A. I generally fired, and ordered around below.

Cross-q. 36. What were you to do in the engine-room?

A. Nothing more than to watch the steam in there. I used to work once in a while to help the engineer along.

Cross-q. 37. You were in the engine-room pretty often?

A. Yes, sir.

Cross-q. 38. Were you not in the engine-room a few minutes before this last time you went in?

A. I was in there, but I can't tell you how many minutes; it is so long ago I have forgot.

Cross-q. 39. Was it not after you passed Hallet's Point?

A. I am not much posted about those points; I don't know.

Cross-q. 40. What time did you get on duty that morning?

A. It was pretty early in the morning; I can't say what time; I should think about three o'clock.

Cross-q. 41. Did you go into the engine-room after you passed Blackwell's Island?

A. I did.

Cross-q. 42. Did you go into the engine-room after the Point, going into the Gate?

A. I did.

Cross-q. 43. Where was the engineer then?

A. Laying on the locker.

Cross-q. 44. Where was he when you passed Blackwell's Island?

A. He was in the engine-room, laying on the locker.

Cross-q. 45. What were you doing in the engine-room so often?

172 A. I was then watching the steam and looking out for the things while he lay there.

Cross-q. 46. How many persons were in the fire-room besides yourself?

A. I was the only one.

Cross-q. 47. Who had charge of the wheel?

A. I couldn't tell; I wasn't forward.

Cross-q. 48. Besides you, the engineer, and the man at the wheel, how many were there on board?

A. There was five on board altogether; two besides us three.

Cross-q. 49. What were their names?

A. Captain Brainerd was captain of her; the deck-hand, Al. York; have forgotten the cook's name.

Cross-q. 50. Did the deck-hand work in the fire-room?

A. No, sir.

Cross-q. 51. How long did you stay in the Vim?

A. Was in her two or three different times; couldn't tell how long have been in her.

Cross-q. 52. When did you leave her the last time?

A. That I could not tell, it is so long ago.

Cross-q. 53. What difficulty did you have with Mr. Robert or with Mr. Gladwish, that led to your retiring?

(Objected to as assuming a fact not proved.)

A. Nothing at all, only I got tired of them.

Cross-q. 54. When did you go there?

A. I couldn't tell you, it is so long ago.

Cross-q. 55. When did you communicate this information, and to whom?

A. I don't know what you mean.

Cross-q. 56. When did you communicate the information which led to your being subpœnaed here as a witness, and to what man was it?

A. I told it to Mr. Odell, down on pier 27, once. I told him yesterday, and I told him before.

173 Cross-q. 57. When did you first tell him?

A. I can't tell you exactly what time it was; it was after, as I was informed, that they had the first trial.

Cross-q. 58. Who told you to go to see Mr. Odell, or did he send for you?

A. He did not send for me that I know of; a good many were telling me to go there to see him.

Cross-q. 59. Didn't you intimate, or send word, to Mr. Robert or Gladwish that you were going to give this information to Mr. Odell or some one else connected with the Galatea?

A. No, sir; I never said a word to Mr. Robert or Mr. Gladwish.

Cross-q. 60. Did you not give them to be informed or to understand that you were going to give this information, and that it was in their power to prevent it, or to that effect?

A. I never said anything to Mr. Robert or Mr. Gladwish, nor sent any word to them.

Cross-q. 61. Is that the only answer you are prepared to give?
A. Yes.

Redirect:

Redirect-q. 62. Where has your home been since you left the Vim?
A. At my home at Athens.
Redirect-q. 63. When you saw Mr. Odell, was it in answer to a message from him to you to come to see him?
A. Mr. York told me that he wanted to see me.

(Signed) EUGENE BRANDO.

Sworn to before me this 10th day of April, 1873.

(Signed) KENNETH G. WHITE,
U. S. Commissioner.

174 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Tuesday, the second day of December, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the honorable Lewis B. Woodruff, circuit judge.

FREDERICK ROBERT ET AL., LIBELLANTS & appellees,
vs.
THE PROPELLER GALATEA, CLAIMANTS & APpellants. } In admiralty.

The above-entitled cause coming on for hearing on appeal;
Mr. Joseph H. Choate is heard in behalf of the claimants and appellants.
Mr. T. C. T. Buckley is heard in behalf of the libellants and appellees.

175 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States courts-rooms in the city of New York, on Wednesday, the third day of December, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the honorable Lewis B. Woodruff, circuit judge.

FREDERICK ROBERT ET AL., LIBELLANTS & appellees,
vs.
PROPELLER GALATEA, CLAIMANTS & APPELLants. } In admiralty.

The above cause being still on hearing;
Mr. T. C. T. Buckley concludes his argument in behalf of the libellants & appellees.
Mr. E. H. Owen is heard on same side.
Mr. Joseph H. Choate is heard in reply.
C. A. V.

176 Circuit court of the United States for the southern district of New York.

FREDERICK ROBERT ET AL.
vs.
THE STEAM-PROPELLER GALATEA, HER ENgines, &c.

WOODRUFF, *Circuit J.:*

The testimony in this case is conflicting, and if, in my judgment, it was

nearly balanced, I should feel at liberty to give such weight to the opinion pronounced in the district court as would result in the same result in this court. I have examined the whole testimony with care, not once only, but several times. The additional testimony in this court, though not directly bearing upon the precise points in difference, does indirectly affect the question of due care in those charged with the navigation of the libellants' tug, by showing, without contradiction, that the engineer of the tug, during the approach to the place of collision, and in the course of passing through Hurl Gate, that most danger ous place of navigation, among conflicting tides and eddies, with rocks in and along its tortuous channel, was asleep, neglecting his engine, subjecting its control to an unskilled fireman casually passing into and from the engine-room from time to time. My con-
177 viction has been strengthened by each examination of the testimony that the fault of the collision is due solely to the tug; that the Galatea kept her proper course, and when the danger became apparent, did all that she could to avoid it; that the tug was so managed that although she made some effort to cross to the southerly side of the channel, the *the* power of the two conflicting tides (one called by the witnesses the true tide, and the other the Mill Rock tide) carried her nearly broadside towards the bow of the Galatea, and the tide was so rapid that the efforts of the Galatea to escape were ineffectual. Under this conviction, I cannot decline to do what seems to me justice between the parties requires me to do, though I do it with great respect and regard for the opinion of the district judge, which has made me hesitate, and again and again scrutinize the testimony before announcing my conclusion.

The libel must be dismissed.

(Endorsed:) Circuit court of the U. S. for the southern district of New York. Fred'k Robert et al. v. The Galatea, &c. Woodruff, circuit j. Filed April 22, 1874.

178 At a stated term of the circuit court of the United States for the southern district of New York, held at the court-rooms of said court in the city of New York, on the 21st day of May, in the year one thousand eight hundred and seventy-four:

Present, Hon. Lewis B. Woodruff, circuit judge.

FREDERICK ROBERT, WILLIAM E. GLADWISH, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch, libellants & appellees,

against

THE STEAM-PROPELLER GALATEA, HER engines, tackle, &c., the Providence and New York Steamship Company, claimants & appellants.

The above-entitled cause having come on to be heard on the appeal of the Providence and New York Steamship Company from the decree of the district court therein, after hearing Joseph H. Choate, of counsel for the claimants and appellants, and T. C. T. Buckley and Ed-
179 ward H. Owen, of counsel for the libellants and appellees, and

due deliberation having been had thereon, upon motion of Evarts, Southmayd & Cho'te, proctors for the said appellants;

It is ordered, adjudged, and decreed that the said decree of the district court in said cause be, and the same is, in all respects reversed, vacated, and set aside, and that the libel herein be, and the same is hereby, dismissed.

And upon like motion it is further ordered, adjudged, and decreed that the Providence and New York Steamship Company, the claimants above named, recover against Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch, the libellants above named, the costs of said claimants in the district and circuit courts in said cause, which have been taxed at the sum of five hundred and eighty-nine dollars and thirty cents.

And upon like motion it is further ordered that judgment be, and the same is hereby, entered in favor of the said claimants against Frederick Robert and Howell W. Robert, on their stipulation for costs, filed the 23d day of December, 1869, in the sum of two hundred and fifty dollars.

And on like motion it is further ordered that, unless an appeal be taken from this decree within the time limited and prescribed by
180 law for a stay of execution, that the said claimants have execution to enforce satisfaction of this decree

(Signed) L. B. WOODRUFF.

(Endorsed:) United States circuit court, southern dist. of New York. Frederick W. Robert et al. vs. the Steam-propeller Galatea, her tackle, &c., the Providence & New York Steamship Company, claimants. Decree. Evarts, Southmayd & Choate, proctors for appellants. Filed May 21, 1874.

181 Circuit court of the United States for the southern district of New York.

FREDERICK ROBERT, WILLIAM E. GLADWISH, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, & Patrick F. Lynch, libellants, appellants,

vs.

THE PROPELLER GALATEA, HER ENGINE, tackle, apparel, and furniture, the Providence and New York Steamship Company, claimants, appellees.

To the honorable the Supreme Court of the United States:

The appeal of Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch, the above-named libellants and appellants, respectfully showeth—

That on the 23d day of December, 1869, Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, and Daniel McWilliams, six of the above-named libellants, exhibited their libel in the district court of the United States for the south-
182 ern district of New York, against the said propeller Galatea, her engine, tackle, apparel, and furniture, praying, among other things,

for the reasons set forth in said libel, that the said court would pronounce for the claims in said libel set forth, and would condemn the said propeller, and all persons intervening for their interest therein, with costs.

That on said 23d day of December, 1869, the Providence and New York Steamship Company appeared in said suit, and entered and filed their claim to the said propeller, and a stipulation for the costs of said suit, pursuant to the course and practice of said district court, and a bond in the sum of thirty-six thousand dollars, according to the act of Congress in that behalf, passed March 3d, 1847, and according to the course and practice of said district court.

That on the 26th day of January, 1870, the said claimants of the said propeller filed their answer to the said libel in said district court, praying that the said libel be dismissed and the said libellants condemned in costs.

That the said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on the 17th, 18th, 19th, 22nd, 23d, 24th, 25th, and 26th days of May, 1871, upon the tes-
183 timony and proofs then adduced by the respective parties; and the said judge having advised thereon, afterwards, on the 14th day of June, 1871, made a decree or sentence in said cause, whereby it was sentenced and decreed that the several libellants recover against the said steam-propeller Galatea, her tackle, &c., the damages by them sustained by reason of the collision in the libel set forth, with their costs, to be taxed, and that it be referred to a commissioner of said district court to ascertain the amount of such damages due to said libellants severally, and report thereon to said district court.

That under the said decree, reference was had to George F. Betts, esq., a commissioner of said court, to ascertain the amount of such damages.

That pending such reference, and on the eighteenth day of March, 1872, by an order of the said district court, the above-named Edward White, James Monk, and Patrick F. Lynch were made co-libellants, with the persons named in the libel in said cause.

That by the report of said commissioner, which was filed on the 20th day of January, 1873, it was reported to the said court that the damages sustained by the libellants by the collision in the libel set forth, with interest thereon to said 20th day of January, 1873, amounted to thirteen thousand one hundred and twenty-three dollars and forty-one
184 cents, to which report the said claimants and libellants, on said 20th day of January, 1873, filed certain exceptions.

That on the first day of February, 1873, the said exceptions of the said claimants and libellants respectively were overruled, and the said report confirmed by the said district court by the final decree thereof, by which final decree it was adjudged that the said libellants recover of the said propeller Galatea, &c., the aforesaid sum of thirteen thousand one hundred and twenty-three dollars and forty-one cents, with interest and costs, amounting altogether to thirteen thousand four hundred and seventy-eight dollars and seventy-three cents, and said propeller was condemned therefor, and, in pursuance of the act of Congress passed March 3d, 1847, summary judgment was entered against the Providence and New York Steamship Company, the principal, and Cornelius H. Delamater and Isaac Odell, the sureties on the bond given on the discharge of the property arrested, for thirty-six thousand dollars, the amount of their said bond.

And that after such final decree the said claimants duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was thereby removed into the said circuit court, and there tried anew; and such proceedings were had in the said circuit court that afterwards, and on the twenty-first day of
185 May, 1874, the said circuit court made a final decree in the said cause, whereby it was adjudged and decreed that the said decree of the district court be in all things reversed and set at naught, and the libel in said cause be, and the same was thereby, dismissed, and that the said Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch pay to the Providence and New York Steamship Company, claimants and appellees, the sum of five hundred and eighty-nine dollars and thirty cents, the costs of said claimants and appellees, and that said appellees have execution therefor.

And it was therein further decreed that a summary judgment be, and the same was thereby, entered against the said Frederick Robert as principal, and Howell W. Robert, sureties, for the sum of five hundred and eighty-nine dollars and thirty cents, the amount of claimants' costs given in this cause, and that said appellees have execution to satisfy said decree, which said decree of the circuit court is, as these appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole and each and every part of said decree of said circuit court to the Supreme Court of
186 the United States, and respectfully pray that the decree of said circuit court, and the libel, answer, pleading, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew on the pleadings and proofs in said circuit court, and upon other proofs to be introduced in the said Supreme Court, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made affirming the decree of the district court, heretofore made in this cause, and condemning the said claimants and appellees, or such other decree made as to the said Supreme Court may seem just.

FRED'K ROBERT.

PLATT, GERARD & BUCKLEY,
Proc's for Appellants.
J. W. GERARD, *Advocate.*

(Endorsed:) U. S. circuit court, southern district of New York. Frederick Robert & al., libellants & appellants, vs. the Propeller Galatea, her tackle, &c., the Providence & New York Steamship Co., claimants & appellees. Petition of appeal to United States Supreme Court. Platt, Gerard & Buckley, proctors for lib'l'ts & app'l'ts, 45 William st., N. Y. Filed January 9th, 1874.

187 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

FREDERICK ROBERT, WILLIAM E. GLADWISH, Henry W. Benedict, Daniel W. Pardee, Henry H. Benedict, Daniel M. Williams, Edward White, James Monk, and Patrick F. Lynch, libellants & appellees,
vs.
THE PROPELLER GALATEA, HER ENGINE, tackle, apparel, and furniture, the Providence & New York Steamship Company, claimants & appellees.

Know all men by these presents that we, Frederick Robert, Darius H. Johnson, & Samuel W. Milbank, are held and firmly bound unto the above-named claimant & appellee in the sum of two thousand dollars, to be paid to the said claimants & appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the sixth day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named Frederick Robert, William E. Gladwish, & others prosecuted an appeal to the Supreme Court of United States, at the city of Washington, District of Columbia, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FRED'K ROBERT. [L. S.]
DARIUS H. JOHNSON. [L. S.]
SAMUEL W. MILBANK. [L. S.]

Sealed and delivered, and taken and acknowledged, this 6th day of June, 1874, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

188 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Darius H. Johnson and Samuel W. Milbank, being duly sworn, depose and say, & each for himself says, that he is worth the sum of four thousand dollars over and above all his just debts and liabilities.

DARIUS W. JOHNSON.
SAMUEL W. MILBANK.

Sworn to this sixth day of June, A. D. 1874, before me.

EDWARD L. OWEN,
U. S. Commisioner for the Southern Dist. of New York.

Foregoing bond is approved as to form, manner of execution, and sufficiency of sureties.

N. Y., June 8, 1874.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Claimants.

SAM'L BLATCHFORD, *D. J.*

(Indorsed:) Vol. , page , U. S. circuit court. vs. Bond for costs on . , proctor. Filed this 9 day of January, 1874.

189 Circuit court of the United States for the southern district of New York, in the second circuit.

FREDERICK ROBERT, WILLIAM E. GLADwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch, libellants and appellants,

vs.

THE PROPELLER GALATEA, HER ENGINE, tackle, apparel, and furniture, the Providence and New York Steamship Company, claimants & appellees.

By the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York.

To the Providence and New York Steamship Company, claimants of the steam-propeller Galatea, her tackle, &c.:

Whereas Frederick Robert, William E. Gladwish, Henry W. Benedict, Frank W. Pardee, Henry H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick F. Lynch have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you,
190 the said The Providence and New York Steamship Company, claimants of the propeller Galatea, her tackle, &c., and have filed the security required by law:

You are hereby cited to appear before said Supreme Court, at the city of Washington, on the second Monday of October, 1874, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the ninth day of June, eighteen hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

SAML. BLATCHFORD.

(Endorsed:) U. S. circuit court, southern dist. of New York. Frederick Robert & al., libellants & appellants, vs. Steam-propeller Galatea, her tackle, &c., the Providence and N. Y. Steamship Company, claimants & appellees. Citation. Platt, Gerard & Buckley, proctors for lib'l'ts & app'l'ts, 45 William st., N. Y.

Due and sufficient service of a copy of the within citation is hereby admitted. Dated New York, June 10, 1874.

EVARTS, SOUTHMAYD & CHOATE.

Filed June 11, 1874.

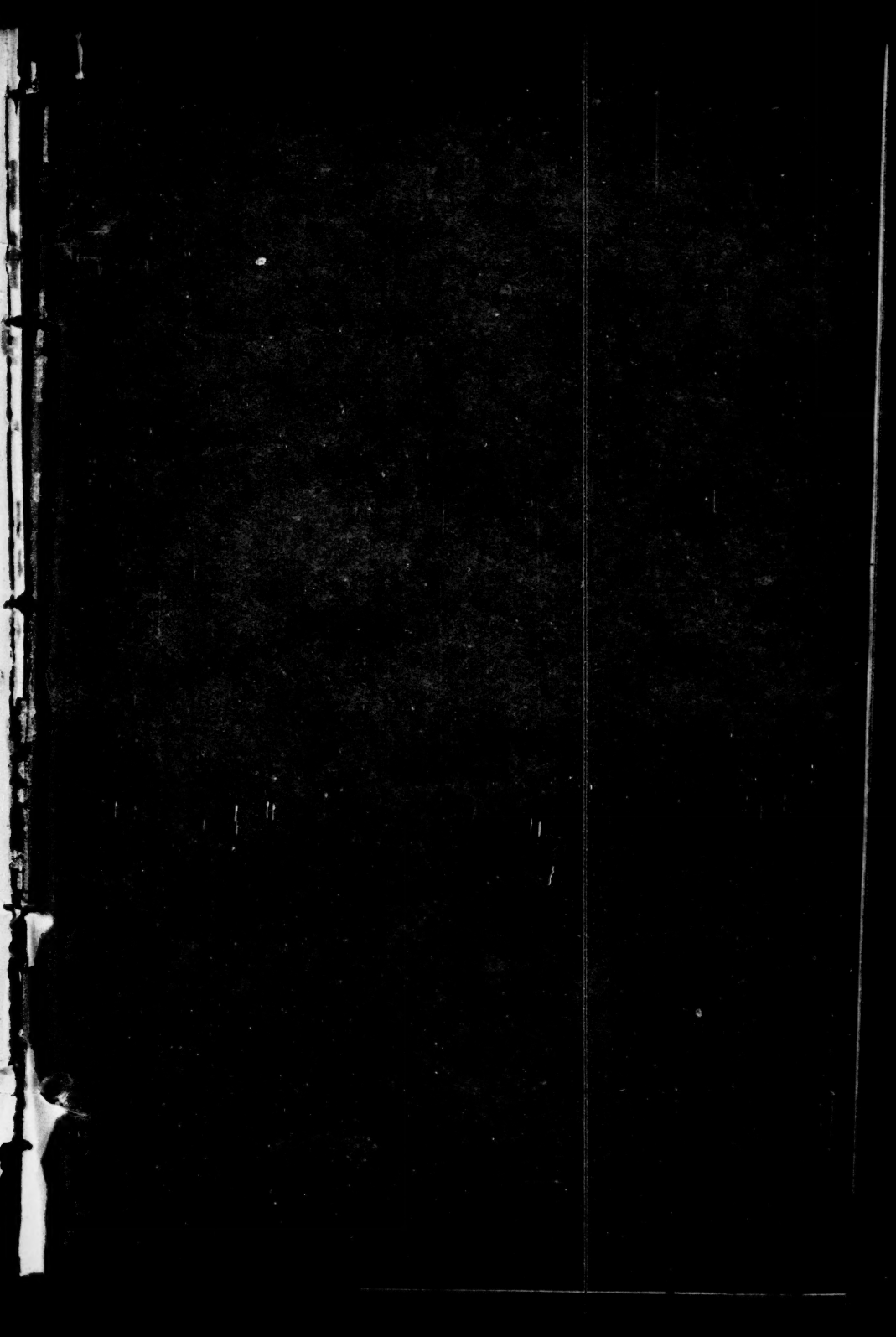
191 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 190, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Frederick Robert et als., libellants & appellants, against the propeller Galatea, her engine, tackle, apparel, & furniture, the Providence & N. Y. Steamship Comp'y, claimants & appellees, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23d day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-eighth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 211. Frederick Robert, William E. Gladwish, H. W. Benedict, F. W. Pardee, H. H. Benedict, Daniel McWilliams, Edward White, James Monk, and Patrick Lynch, appellants, vs. the Propeller Galatea, &c., the Providence and New York Steamship Company, claimants. S. New York C. C. U. S. Filed 27th July, 1874.



U. S. Supreme Court.

FREDERICK ROBERT, *et al.*,
Appellants,

vs.

The Propeller GALATEA, &c.,
THE PROVIDENCE AND NEW YORK
STEAMSHIP COMPANY,
Claimants.

Brief and Points for Appellants.

This is an appeal by the Libellants from a decree of the Circuit Court for the Southern District of New York, reversing a decree of the District Court.

The final decree of the District Court was entered on February 1, 1873, directing that the libellants recover the sum of $13,123.41, besides costs (Record, p. 77.)

The decree of the Circuit Court reversing that decree and dismissing the libel, was entered on May 21st, 1874 (p. 92.) For the opinions of the District and Circuit Judges see pp. 82 and 91.

The libel was for collision. It was filed by the libellants, as owners of three barges, the "C. J. Hoffman," the "Reading" and the "Pottsville," and of their cargoes of coal, which, while being towed through Hell Gate by the steamtug "Vim," before daylight on the morning of the 18th of December, 1869, were sunk by a collision with the propeller "Galatea."

STATEMENT OF FACTS.

The steam-tug "Vim," owned by two of the libellants, was towing the three barges from Jersey City to New Haven. She had the "Reading" on her starboard side, and the "Pottsville" on her port side, and the "Hoffman" on the port side of the "Pottsville." The bows of the barges projected 15 to 20 feet ahead of the tug (fol. 18), which was 55 to 65 feet long. The usual tow of the "Vim" was four loaded boats, so that her tow was a light one for her. Her master and pilot, Brainard, was in her pilot-house at her wheel, and her deck hand, York, was on deck forward, outside of the pilot-house, (fol. 27). The masters of the three barges in tow were at their helms. She was making about three knots an hour (Brainard, fol. 21; York, fol. 28.)

The "Galatea" was a propeller of 1566 tons burden, 245 feet long and 54 feet wide, (fol. 39). She was bound from Providence to New York. Her master, Nye, her first pilot, Torrey, and her second pilot, George W. Nye, (a son of Capt. Nye,) were all in her pilot house, as were also two quartermasters, Scudder and West, who were at her wheel. She also had a bow watchman, Davis, on her forward deck. She was running at the rate of 12 knots an hour (Nye, fol. 43.)

The collision took place near Pot Rock, in Hell Gate. It was a bright moonlight night, ("moon about an hour and a-half high"; Nye, fol. 30), a little overcast, and the tide was about the strength of the flood running to the eastward about seven knots an hour (fol. 22.)

The "Galatea" struck the port side of the tow at right angles; she cut square through the two barges, on the port side of the "Vim," (the "Hoffman" and the "Pottsville,") and without hitting the "Vim" herself, hit the barge on the starboard side of the "Vim," (the "Reading,") in the side. All three of the barges were sunk, with their cargoes.

There is no dispute as to the time when each vessel saw the other, or the place where each was when the other was

seen. The "Vim" and her tow were about abreast of Flood Rock, at B on the chart, when the lights of the "Galatea" were seen about at Negro Point Bluff (Brainard, fol. 19), and the "Galatea" was about off the Bluff when she saw the lights of the "Vim" abreast of Flood Rock (Capt. Nye, fol. 40).

Nor is there any dispute, which is materia, as to the signals which were given on each boat. The master of the "Vim" indeed says that he blew one whistle, which the "Galatea" answered with one, and that the "Galatea" afterwards blew another one whistle, which he answered with one (fol. 19); while the master of the "Galatea" says he blew one whistle, which the "Vim" answered with one, (fol. 40), and that no other whistles were given.

This difference of testimony is of no consequence, for each vessel gave the signal to go to the right and it makes no difference whether it was done once or twice. There was no *confusion* of signals.

Each vessel had the proper lights set and burning brightly. There is no question in the case of either light or lookout.

Each vessel slowed, stopped and backed her engine before the collision; but as the time when, and the effect of, such backing, there is controversy.

Each vessel put her helm to port, in conformity with the signals given by each. But as to the extent and effect of this movement of their respective helms, there is controversy; as also there is as to the time and place when this porting was done.

FACTS IN DISPUTE.

The points of fact in controversy are the following:

1. The libellants claim that the collision occurred on the south side of the true tide, close to the Pot Rock. The

claimants insist that it took place on the north side of the channel, at N. on the chart.

2. The libellants insist that the "Vim" and her barges ported their helms when the whistles were blown, and kept as close to the edge of the true tide, on her starboard hand, as they could without getting into the eddy, which is south of the Pot Rock, and which they claim would have put the boats ashore if they had got into it.

The claimants do not deny that the helms were ported, but they insist that instead of keeping on the starboard edge of the true tide, the "Vim" crossed the tide nearly to the Hog's Back, on the northern edge of it, and never left that northern edge till the collision occurred.

3. The libellants insist that the "Galatea" came across the tide, to the southern edge of the tide, and there struck the tow.

The claimants insist that the "Galatea," coming down in the middle of the tide, went to the northern edge of it, and there struck the tow.

4. The libellants insist that the "Galatea" was moving ahead at the collision.

The claimants insist that she was not moving ahead, but "had stopped and was backing her engines." (Ans. fol. 13.)

5. The libellants insist that the "Vim's" tow was a light one for her, and that she could and did control its movements.

The claimants insist that she did not control it, and they "*suspect*" (Ans. fol. 15) that the tow was heavier than the "Vim" had strength to handle, and was therefore "drifted out of its course by the force of the tide."

MARKS ON THE CHART.

B. Place of the "Vim" when the captain of the "Galatea" saw the tow. (Fol. 44.)

+ Place of the "Vim" when Hatfield, mate of the "Galatea" saw her. (Fol. 58.)

A. Place of the "Vim" when she answered the "Galatea's" whistle, (Brainard, fol. 19.)

↓ Position of "Vim," testified to by Darling, (fol. 46.)

Pot. Place of collision, as claimed by the libellant, (fol. 20.)

The marks from A to Pot show course of the "Vim," and the cross mark the course of the "Galatea," as claimed by Capt. Brainard. (Fol. 20.)

N. Place of collision, testified to by Capt. Nye (fol. 41,) Darling (fol. 46,) and Hatfield (fol. 57.)

•. Place of collision, also testified to by Darling (fol. 46.)

No. 1. " " testified to by Torrey (fol. 50.)

" " " " Scudder (fol. 56.)

P. Place abreast of which the "Galatea's" witnesses say she ported.

First Point.

There ought not to be much difficulty in ascertaining upon which party rests the blame of such a collision. Here were two steam vessels meeting each other in a channel where there was room for them to pass each other. They saw each other at an abundant distance. Neither of them mistook the other's position. Both agreed as to what each should do. And yet they came into disastrous collision.

The measure which each proposed was right, and if each had successfully carried out that measure there would have been no collision.

It would seem to follow, that if we can find out which of them has failed to carry out the measure which she proposed, that must be the one which is in fault.

Second Point.

A glance at the chart will show that the difference between the parties as to the place of the collision is only as to the side of the channel.

Brainard says it was at the word "Pot" on the chart. (fol. 20.)

And so says York substantially (fol. 28).

Capt. Nye says it was at N. (fol. 40, 44).

Hatfield says it was at N. (fol. 57).

Darling says it was at N. (fol. 46).

Darling says also it was at black dot (fol. 41).

Torrey says it was at "No." (fol. 50).

Scudder says it was at I of No. 1. (fol. 55).

These points are substantially opposite to each other in the channel.

Third Point.

A glance at the chart will also show in what directions the vessels ought to have been heading at that spot, as they passed.

The right course for the "Galatea" was to head west, or a little north of west, to go through the main ship channel. (Capt. Nye, fol. 41.)

And the right course for the "Vim" and her tow was to head south of east.

Fourth Point.

By agreement of all the witnesses, the "Vim" was heading south of east at the time of the collision and some time before.

"At the collision we headed about east by south."
Brainard, fol. 21.

"They continued to head east south-east." Capt. Nye, fol. 42.

"They were pointing about east south-east." Darling, fol. 45.

"She appeared to be heading to southward." Davis, fol. 49.

"From there till they struck they pointed about S. S. E. by compass." Torrey, fol. 50.

"Tow turned and headed to south and east." G. F. Nye, fol. 53. Also, fol. 54.

"She pointed about S. E. or E. S. E." Scudder, fol. 55.

"From there as tow came down it pointed to south and east." West, fol. 56.

But by agreement of the witnesses on both sides, the "Galatea" at the collision was not heading West, or North of West, but was heading about South, South West, which is right across the channel.

Capt. Nye—"My boat was heading about S. S. W. when we struck" (fol. 42).

Davis—"She was across the tide; she was going back and swinging across tide, when they came together" (fol. 49). "'Galatea' was not across tide *till she stopped*" (fol. 49).

Brainard.—"She went on a straight line across the tide and into me on the line I have marked on the map." (Fol. 21, 22.)

Fifth Point.

This position of the "Galatea," which placed her, a vessel of 245 feet long, across a channel of about 300 feet in width, was, beyond peradventure, the direct cause of the collision.

This position was due to a change in her heading, as she approached the tow, which change was the result of two forces combining—the tide striking her on her starboard bow, and the backing of her engine.

That each of these forces combined in producing this result is the evidence of all the claimant's witnesses.

Capt. Nye—"As we commenced to back, the bow of the steamer fell off to the southward, (fol. 40.) * * Tide swung off our bow to S. & E., about four points before collision; tide struck our starboard bow. * * * When we began to back we slewed round, (fol. 41). * * My bow first began to slew immediately after we stopped," (fol. 42).

Darling—"The 'Galatea' began to back, that swung her off very little to the southward." (Fol. 45).

Davis—"As we stopped our head drifted to the southward, swung by action of the tide. * * * Before 'Galatea's' bow began to swing I saw tow right ahead, (fol. 47). * * As soon as she stopped her head dropped off to port, quickly. She was backing, and as she backed her head fell off more." (Fol. 48.)

Torrey—"Before collision I observed our vessel's head swing, caused by backing and tide; it began to swing as soon as we began to back, (fol. 50). * * Don't think we began to swing to south, till we began to back." (Fol. 51).

G. F. Nye—"Head of 'Galatea' began to fall off when we began to back, (fol. 53). * * * After we swung a point to port, tide acted on our starboard bow, and backing acted to throw her still more to port." (Fol. 54).

Scudder—"Our head did not begin to swing to south before we began to back (fol. 55). * * Backing threw our bow to port" (id.).

West—"After she began backing her head fell off three or four points to south (fol. 56). * * When we

began backing, that slewed our bow to south towards Long Island, and stern towards Ward's Island" (fol. 57).

Hatfield—"Before vessel struck, head of "Galatea" fell off" (fol. 57.)

These two forces swung her off to southward about four points.

"About four points" (Capt. Nye, 41).
"Very little" (Darling, 45).
"Three points or more" (Davis, 47).
"Four or five points" (Torrey, 50).
"About two points" (G. F. Nye, 53).
"Two or three points" (G. F. Nye, 54).
"Three or four points" (Scudder, 55).
"Three or four points" (West, 56).
"Not more than one and a half to two points" (Hatfield, 57).

Sixth Point.

It will now appear very plain that the course of the "Galatea," *before this swinging began*, was wrong. She should have been heading the tide so as not to be affected by it, instead of taking it on her starboard bow.

a. Since she fell off before the collision three or four points and then headed S. S. W., she must have been heading S. W. by W. or W. S. W. before she began to fall off.

b. This is the course sworn to by G. F. Nye, the second pilot: "We were heading S. W. by W. till we began to back" (fol. 54).

c. Torrey, the first pilot, says they "hauled up around Negro Point to west, and a little to north of west" (fol. 51), and so does Scudder (fol. 55).

d. That Nye is right on this point, and Torrey and Scudder mistaken, is proved not only by the fact that the "Galatea," at the collision, after swinging three or four points, headed S. S. W., but by the further fact that the "Galatea" never showed her red light to the tow, as she must have done if she had headed to the north of west.

Brainard.—"Never saw her red light before the collision," (fol. 19.)

York.—"I saw her green starboard light. Did not see her red light before collision," (fol. 27).

e. Captain Nye says she began to slew immediately after she stopped (fol. 42); and so Davis says, the bow watchman (fol. 48), while Torrey (fol. 50), G. F. Nye (fol. 53), Scudder (fol. 55), and West (fol. 56), say that she did not begin to slew till she backed her engine.

f. Now, the "Galatea" did not stop till she was off Negro Point.

Nye, "When I got *around the Point* I rang to stop." (Fol. 41.)

"When I got to Point I put wheel hard aport (fol. 40). When we ported our wheel we were, on chart, at about opposite 71 at P. Next thing we did was to ring to stop." (Fol. 44.)

Darling, "Heard bell to slow; went forward on deck; * * when I went forward 'Galatea' was right off Negro Point (fol. 45). * * * When bell rung to stop on 'Galatea,' I came out and went to rail." (Fol. 46.)

Torrey: "Bell to stop; we were then heading up by Point" (Fol. 50).

"Ported hard aport, then stopped and backed" (Fol. 51).

"Abreast of Negro Point bell rang to stop" (Fol. 54)

West—"As we approached Negro Point we rang another bell to stop her" (Fol. 56). "We ported our wheel off Negro Point. * * * After we ported hard aport, the order was given to stop" (Fol. 56).

Hatfield, (fol. 57) is the only witness who says otherwise. He says she stopped long before the wheel was ported, and is clearly mistaken.

(*g.*) If this slewing began when her engine stopped, the tow was then within 500 or 600 feet. (Nye, fol. 41). If it only began when her engine backed, it was within 200 or 300 feet.

Captain Nye, "perhaps 200 feet off," (fol. 41).
G. F. Nye, "perhaps 300 feet off," (fol. 54).
Torrey, "perhaps 200 feet off," (fol. 54).
Scudder, "perhaps 150 yards off," (fol. 55).
West, "perhaps 150 to 200 feet off, (fol. 57).

Whichever it was, her course was wrong, if she was in the middle of the channel. At any point within 500 feet of the place of collision, instead of heading south-west by west, she should have been heading north of west, so as not to take the tide on her starboard bow.

The fact that she ought to have been so heading, doubtless accounts for Torrey and Scudder's evidence that she *was* so heading.

Seventh Point.

How is this heading of the "Galatea" when she began to swing to be accounted for?

This must depend upon her position in the River from Negro Bluff to Negro Point.

(*a*) Her witnesses swear that when she passed the Bluff she was about the middle of the true tide and nearer the Long Island shore.

Captain Nye—"As we were off Negro Point Bluff we were nighest to Long Island shore than to Ward Island shore, or about in the middle of true tide" (fol. 40.)

Davis—"Nearest to Long Island shore" (fol. 48).

Torrey—"We came along about in middle of true tide, and about middle of channel" (fol. 49.)

G. F. Nye—"As we came along Negro Point Bluff we were in true tide, nearly midway of channel, with wheel midships" (53).

Scudder—"When we passed Bluff, we were if anything nearer Long Island shore. We came about with true tide" (fol.54).

Hatfield—"On north side of tide, rather nearer Long Island shore" (fol. 57).

(*b*) Her witnesses also testify that her course at that time was about S. W. which the chart shows would be right, and that that course was kept with perhaps a change of one point, till she began to back.

Torrey—"At that time we were going about south-west," (fol. 51).

G. F. Nye—"We were heading S. W. by W. till we began to back," (fol. 54).

Hatfield—"From time we opened by Bluff our course was a little to west of south-west, about west-south-west" (fol. 57).

But it is plain that they must be wrong, either as to position or course, for such a course from that position would have taken her up into Pot Cove.

c. Now libellants' witnesses say that was not her position, but that she was close to Negro Point, instead of being in the middle of the true tide, and that on this account the tide struck her on the starboard bow and set her stem off to port.

Brainard, fol. 22; Monk, fol. 24; York, fol. 27.

And with them agrees the answer: "Did keep to the right, *very close to the shore* on the right or north or north-east side, and as close to the shore as it was at all safe or practicable for the propeller to keep" (fol. 14). "So close to the shore," &c., (fol. 15). "So close to the north or north-east shore, *which the propeller was hugging*" (fol. 15).

Eighth Point.

It is quite immaterial whether this heading of the propeller S. W. by W., in such a way and at such a time as to allow the tide to catch her on her starboard bow and throw her off athwart the channel, was caused (1.) by her failure to port her helm sufficiently as she turned the Point, being in the middle of the tide, or (2.) by her being so close to the Point as to prevent her from obeying her helm, when it was ported, in season to prevent the tide from throwing her off.

Either course was negligence, and, whichever was the cause of it, the result was the same. It presented this steamer, 245 feet long, heading right across the channel, which is not claimed by any to be more than 500 feet between Negro Point and Pot Rock, and which is not more than 310 or 400.

"300 to 350 or 400 feet," Lockwood (fol. 35).

"Between Negro Point and Pot Rock channel is 500 feet," Torrey, (fol. 49.)

"Width of tide when vessels go between Pot Rock and Negro Point is about 300 feet," Horton, (fol. 52.)

Three hundred feet from Pot Rock is far over beyond the "dotted lines which are the true tide." Decker, (fol. 31): Sprague, (fol. 32).

Ninth Point.

Moreover, the onward motion of the "Galatea" was not stopped before the collision. Her answer contains no such

allegation. It only alleges that she had "stopped and was backing her engines" (fol. 13.)

(*a*). Her witnesses, it is true, say that her headway was stopped, and that she even was backing. But the mode and effect of the collision are more to be relied on than the judgment of witnesses, as to such a point; and that demonstrates that she was going ahead.

(*b*) The collision was one at right angles. So say the witnesses on both sides.

"At right angles." Brainard, (fol. 20.)

"Cut square across," Lynch, (fol. 23)

"Cut straight across," Gladwish, (fol. 26.)

"Nearly at right angles," Captain Nye, (fol. 44.)

And the courses of the vessels as stated, S. S. W. and E. by S ½ S., make within half a point of a right angle.

If she had not struck at a right angle she must have hit the "Vim."

(*c*) The three barges and the tug were 70 feet wide. If we take Darling's evidence to be true, (fol. 45) the fact that while the bow of the outside port barge struck the star-board bow of the "Galatea" not more than 6 feet from her stem, the bow of the *inside* port barge was cut clean off square across by the stem of the "Galatea," is sufficient to demonstrate that she was in forward motion. No such effect could be produced by only the forward motion of the tow, while the "Galatea" was heading, as she was, S. S. W.

d. Still less could the forward motion of the tow alone produce the result of the collision, if it occurred as Brainard says.

"She hit first port side of 'Hoffman' about 10 or 12 feet from 'Hoffman's' stem; cut through

her; cut bow of 'Pottsville' off also; then went past my bow and hit port side of 'Reading' and mashed it." (Brainard, 20.)

She cut the "Pottsville" in two pieces, so that the bow brought up at Twenty-sixth Street, East River, while the stern brought up in Pot Cove. (Gladwish, fol. 26; Robert, fol. 29; Monk, fol. 23).

e. And that this is the way in which it did occur is proved also by four other witnesses.

"The 'Galatea' struck us athwart ships; cut bow off our boat (the 'Hoffman') and through the 'Pottsville,' and far enough into the 'Reading' to sink her." (Lynch, fol. 23.)

"The 'Galatea' took my bow off, even cut, about 15 feet from bow. * * * After she hit me (the 'Pottsville') she struck the 'Reading.'" (Monk, fol. 2)3.

"She went through bows of 'Hoffman' and 'Pottsville,' and came into me ('Reading'), into side; I heard the wood go in against coal." (White, fol. 24.)

"The 'Galatea' struck them and cut off the boats on the port side, and passed by the 'Vim,' and hit the boat on the starboard side." (York, Fol. 27.)

f. If the collision had been caused by the motion of the tug alone, the injuries received by the "Galatea" must have been on her starboard bow alone. But they were not. She was scratched on the port side of her bow, as well as on the starboard (fol. 30), which would be a natural result of her cutting through two coal barges, receiving the most severe injury on the starboard bow. If she had been lying still, and had been struck on the starboard bow by such a weight (over 1,000 tons) going at such a speed, it must have knocked her stem out of her.

TENTH POINT.

In order, then, to place the collision where the claimants' witnesses place it, the claimants must show either (1,) that the "Galatea" did not head at the collision across the tide as her witnesses testify that she did; or (2,) that when she began to slew she was far north of the northern edge of the true tide, which her witnesses deny; or (3,) that when she slewed, instead of her head falling off to port with the tide, her stern slewed up *against the tide to starboard*, which is impossible.

But if we place her, when she began to swing, near the centre of the tide, or even on the northern edge of the tide as she claims, or north of it as libellant's witnesses say, but still heading so as to take the tide on her starboard bow, and if we have her swing by her head fa'ling off to port, till at the collision she headed as Capt. Nye says she did, then we bring her inevitably to the place where the libellants say she was at the collision.

a. All the evidence shows that if the "Galatea" did come north of the true tide, heading S. W. or S. W. by W. when she came by Negro Point, then the result would inevitably be that her bow would be carried off in spite of her port helm, and she *must* go over to the other side of the channel.

Brainard—"I think 'Galatea' was under port helm from Negro Point till she came into me; the tide caught her starboard bow as she came out by Negro Point with her wheel hard aport; she would not answer to her wheel till she got her length into the tide, and she would then gradually swing to starboard; if she had been further into the tide and not close to Negro Point, she would have felt her port wheel." (Fol. 22.)

Re-cross—"Tide took stem of 'Galatea' just after she opened by Point; when I saw hull of 'Galatea'

coming out by Point, I told man in pilot-house with me, York, that the 'Galatea' was so close to Point, I thought when she struck the tide she would come clean over to us before she got her head around to tide." (Id.)

Monk—"When I first saw the 'Galatea' I thought she was closer to Negro Point than I had ever seen a vessel before; I think she was her own length off from Negro Point; from Negro Point the 'Galatea' went across the tide." (Fol. 24.)

White—"I saw 'Galatea' come into tow; she ran straight across channel." (Fol. 24.)

York—"I think as she came out by the Point the tide took her starboard bow and sent her over towards Hallett's Cove." (Fol. 27.)

Decker—"If steamer coming from east is not in true tide, but is nearer north shore, and comes out from Negro Point with port helm, a ship of that size would have to reach into that tide three or four times her length before she would mind her helm sufficiently to come up to it," &c. &c. (Fol. 31.)

Sprague—"The tide would strike her on her starboard bow. She would naturally sheer to port towards Long Island. She could not counteract that sheer by a port helm until after she went her length into tide." (Fol. 33.)

McNeil—"There is a tide comes around Hog's Back and passes short distance from Negro Point, that would strike a vessel that came too close to Negro Point, and shove her over; she would sheer her length into tide before she would feel her helm, her stern being in one tide and her bow in another." (Fol. 39.)

b. If, before she began to swing, she was in the northern edge of the true tide, and heading north by west, so as not to take the tide on her starboard bow, then at the

collision she had turned so as to be at right angles to her former course. Her stem then must have been her length to the southward of that former course, instead of being at *N*, which is north of it.

In that case, if the tow had been, as claimants insist, on the northern edge of the tide, they would have struck the "Galatea's" stern, instead of being struck by her stem.

The fact that they were struck as they were, with the "Galatea" heading across the channel, shows that there was abundance of room for the "Galatea" to have passed north of them if she had headed the tide.

c. Again, the collision could not have taken place where the claimant's witnesses say it did, at N., because if the "Galatea" was there, heading as she was S.S.W., her stern would have been on the rocks *west* of Negro Point. It is true she touched the rocks, but that was east of Negro Point, and by backing *after* the collision.

"After collision we backed and struck back of Negro Point. We backed and filled till we got headed to East." (Torrey, fol. 51).

Eleventh Point.

But let us assume that claimant's witnesses are correct in saying that the "Galatea" was in the middle of the true tide when the signals were exchanged. What course should she have pursued at that time and place? Knowing that, if she kept on, she was about to meet the tow in the narrowest part of the channel, she ought, if she determined to keep on, to have placed herself *at once* on the northern side of it. This she says she did not do. By the united evidence of her witnesses, she ran *without changing her helm* from Negro Point Bluff to Negro Point, a distance of a quarter of a mile.

"When I whistled, my helm was midships; went on without moving my helm till I got to Negro Point." Capt. Nye, fol. 40.

"Wheel was nearly midships at Negro Bluff. As we came up to Negro Point we hove it to port. I did it." Torrey, fol. 50.

"We were heading S. W. by W. till we began to back." G. W. Nye, fol. 54.

"We ported our wheel off Negro Point." West, fol. 56.

This was too late. She must then port to turn the Point; and to change her course four points to starboard, against a seven knot tide, was all that her helm ought to have been called upon to do, without making the further requirement upon it, that it should then send the "Galatea" bodily over to the northern edge of the current. It could not do that also, in the time and distance then allowed for avoiding the collision.

Therefore, taking the position of the "Galatea" to be as her witnesses claim, instead of as her answer alleges, still she was manifestly in fault, and that fault manifestly caused the collision.

Twelfth Point.

Ordinary prudence required the "Galatea," when she saw the tow, instead of keeping on so as to meet it at the narrowest part of the channel, to have waited above Negro Point.

The "Narragansett," 5 Ben. 255, and 10 Batch. 475.

Capt. Nye, "saw it was a tow coming to meet him" (fol. 40). He knew that the tow could not stop, but must come on with the tide, while he could stop anywhere, ("can stop East of Negro Point." McNiel, Fol. 39). And he knew they must meet in the narrowest part of the channel if he kept on. The undertaking to pass a tow as

wide as that, occupying a quarter of the channel, in such a narrow spot, where a slight variation of either boat's course might bring on a collision, was certainly choosing a far more hazardous course than it would have been to have waited above Negro Point. And the "Galatea" should be held to the familiar principle that having adopted the more hazardous of two manœuvres which were equally open to her, she is responsible for the failure to carry it out successfully.

The "Merrimac," 14 Wall. 199.
The "Newport," 5 Ben. 233.

He was bound to the more care because the approaching vessel was a tow.

> "A tug with vessels in tow is in a very different condition from one unencumbered. She is not mistress of her motions. She cannot advance, recede, or turn either way at discretion. She is bound to consult their safety as well as her own."

The "Syracuse," 9 Wall. 675.
The Alleghany," id. 524.

It seems entirely obvious, that if she undertook to carry out such a movement, it was her duty so to place herself that she would in no case throw herself across the channel, for that must make a collision unavoidable.

Thirteenth Point.

The "Vim" was properly conducted, and was kept on the starboard side of the channel.

a. She had a light tow, and was perfectly able to handle it.

> "Her usual tow is about four loaded boats, two each side." (Brainard, fol. 18.)
>
> "Generally towed coal boats—one to five barges." (York, fol. 27.)

"Usual complement through Gate has been four boats, two on each side." (Robert, fol. 29.)

"The 'Vim' is a boat of sufficient capacity and power to tow three barges loaded with coal safely and securely. I have frequently seen her towing barges through there. I have seen her have five." (Henry Lockwood, fol. 34.)

"The 'Vim's' tow was not unusual for her."

(Charles Lockwood, fol. 37.)

"I have seen her tow through the Gate with five barges. Three is not an out-of-the-way load for her."

(Moore, fol. 37.)

b. Her witnesses testify that her helm and the helms of the barges were ported in accordance with the signals.

Brainard, fol. 19; Monk, fol. 24; White, fol. 25.

Their evidence is entitled to the greatest weight on such a point.

McNally *vs.* Meyer, 5 Ben. 240.

Their evidence is not denied by the claimant's witnesses. On the contrary, it is supported by the claimant's evidence.

"She headed around to the East and then to the South. I should judge that he *put his wheel aport.*"

Capt. Nye, fol. 40.

"When she got to the Hogs Back, and *hauled out*, I lost the green light."

(Torrey, fol. 51.)

"Turned and headed to South and East; appeared to be drifting sideways; did not go ahead. I judge the heading South and East was by her *porting her helm.* (G. F. Nye, fol. 53.)

She pointed about S. E. or S. S. E., at angle of 45 degrees. I judged from *port helm.*

Scudder, fol. 55.

This evidence not only shows that the helms were ported, but that such porting produced the proper result. And this shows, as was the fact, that the tow was moving through the water so as to have steerage way.

"I was going at my usual rate of speed with such a tow." (Brainard, fol. 28.)

"The tug could tow three boats about three knots," York, (fol. 28).

(*c*) Claimants insist that the tug crossed the tide to the Hog's Back before she turned to East.

But this is manifestly an error.

1. She could not do it unless by putting her helm sharp to starboard. Going from B on the chart towards the Frying Pan, the tow would be struck on its port bow first by the tide from the Middle Channel, and then by the tide from the Ship Channel, and would be inevitably swung round to east before it could possibly reach the Frying Pan, much less the Hog's Back.

2. It is a much easier supposition that claimants' witnesses were mistaken in their judgment of the position of the tow, than to suppose that the tow would not be swung round by the tide from the Middle Channel.

(*d*) Claimants next insist that having crossed to the northern side and then headed to south and east, the tug made no headway in that direction at all.

1. But they do not deny that she had steerage way, for they say she swung under a port helm. There was nothing to check the headway which she had had all the way from Jersey City ("three knots") (York, fol. 28.)

She must therefore have made headway in the direction in which she pointed.

2. The Circuit Judge in his opinion speaks of the tug's having "made *some effort to cross* to the southerly side of the channel," which he implies was ineffectual. But he does not seem to comprehend that in order to get on the *northern* edge of the tide at the Hog's Back she would have had to cross two tides; and that instead of the "conflicting tides" of which he speaks being an element which made it more difficult for the "Vim" to reach the southern edge, the force of the middle channel tide was a force *favoring* the effort to reach that edge, and opposing any effort to reach the Hog's Back.

3. It is not difficult to explain the evidence of the claimants' witnesses, who testify that the tow, though heading south of east, did not appear to move to the south, by the fact that the "Galatea" was herself going to the south, and as she crossed the tide on her swing to port, and the tow came on heading E. by S., the relative positions of the two vessels would vary very slowly as they approached each other.

McNally *vs.* Meyer, 5 Ben. 240.

4. That the tug slowed and stopped and backed her engine before the collision, was certainly not a fault, and the result of such stopping and backing cannot be imputed as a fault, whatever it may have been. Her engine was not stopped till the "Galatea" was coming across the tide head on. (Brainard, fol. 22.)

If she was on the south side of the tide, as she alleges, she certainly was not called on to keep

on full speed into the eddy, which would have made her unmanageable and put her ashore.

Decker, - - -	fol. 31–32.
Sprague, - -	" 33.
Bell, - - -	" 33.
Henry Lockwood,	" 35.
Franklin, - -	" 36.
Stevens, - -	" 36.
William Lockwood,	" 37.
Charles Lockwood,	" 37.
Moore, - - -	" 38.
Scofield, - -	" 38.
McNeil, - -	" 38.

5. But the libellants' witnesses testify that the tow was kept on the starboard side of the true tide.

Brainard—"Swung my tow to southward until I steadied them (fol. 29).

"I did not put my wheel hard aport; ported it just enough to swing my tow to southward; put it five or six spokes to port; could have put it fifteen to twenty spokes over; I did not consider it safe to put it any farther over (fol. 21.)

I told the bargemen to port, and when I had swung far enough to southward I told them to steady; when I gave them the order to port my wheel was aport; I put my wheel to port the first whistle I blew and kept my tow to southward, enough to *hold my tow close over to eddy;* steadied it so as not to go into eddy (fol. 21). We were at edge of true tide, between that and eddy on south" (id.)

Monk—"I put my wheel seven or eight spokes to port; then got orders to steady; did not get

second order to port; I steadied when he told me to" (fol. 24).

White—Captain of "Vim" "sung out port and then 'steady.' * * * Had my wheel steady when hit; got second order to port—to port a little; ported two spokes" (fol. 24–25).

And the fact that the boats, when struck, sunk *in the eddy* is conclusive as to the correctness of libellants' witnesses on this point. If they had been on the northern edge of the tide and had been sunk by their own motion with the tide, as the claimants allege, instead of by the forward motion of the "Galatea," they never could have got into the eddy at all, as they did.

Brainard, - -	fol. 20.
Monk, - - -	" 23.
White, - - - -	" 24.
Robert, - - -	" 29.

e. It is suggested that there was fault in the "Vim," in that her engineer was asleep.

1. No such charge was made in the original answer. Nor did any such thing appear in the evidence on the trial.

   No such charge was made by an amended pleading in the Circuit Court, and the case stands now without any allegation of such a fact, or any allegation of any movement of the tug which would have been the result of such a fact, if it had existed.

2. The charge is incredible in itself. No man, having any regard for his own life, knowing that his boat was about to go through that dangerous strait, would go to sleep at his post till after that danger was past.

3. The charge is not proved. Brando swears to it, no doubt; but Brooks' evidence is to the contrary, and Brooks is just as credible as Brando, and his evidence was given in open Court, where the District Judge had the best means of determining his credibility.

The "Julia," 1 Lush. 235.
The "Alice," 3 Aspinall, 187.
The "Commerce," 3 Wm Rob., 295.

4. The Circuit Judge speaks of Brando's evidence as showing "without contradiction" that the engineer was asleep. (Fol. 177). How he could have so considered it is not easy to understand.

Brando's story is that he went into the engine-room and found Brooks asleep; that he heard two bells to stop the engine, and without waking Brooks he stopped it; that he then heard two bells to back, and a jingle bell, and he then waked Brooks up and Brooks backed the engine, and he, Brando, ran out on deck. (Fol. 169.)

Brooks had sworn, "When I got bell to slow, *I* shut off steam part way; she was wide open and I shut off half; went on so till I got bell to stop, then shut off the rest and she was stopped." (Fol. 25.)

How any man could say that either of these stories showed anything "without contradiction," if he had them both before his mind, is not easy to see.

We desired to produce in this Court further evidence on this point, in view of this singular misapprehension of the Circuit Judge, and made a motion accordingly. The claimants successfully opposed our motion. But nevertheless we cannot

think that this Court will consider Brands' evidence as being "without contradiction."

He is contradicted not only by Brooks' evidence, but by Brainard, who swears, without any suggestion that any such question as this was to be raised, that he saw Brooks "just before we got into Gate" (fol. 22), and Brooks says he was "out of the engine room and got a drink of water, and while out spoke to the captain" (fol. 26), whereas Brando's evidence (if it is anything) is that Brooks was lying on the locker all the time from Blackwell's Island (fol. 170).

5. But suppose Brando's evidence to be true, what is there in it which affects the case? On his evidence the engine was stopped and backed as soon as the bells were rung. How would it have been different if Brooks had been awake? How ought it to have been different? The Circuit Judge does not suggest that this fact of Brooks being asleep had any effect upon the movements of the tug. He says that the proof in support of the charge "indirectly affects the question of due care in those charged with the navigation of the libellants' tug." But, with all due respect to the learned Judge, we fail to see how the fact that the engineer was asleep in the engine-room, directly or indirectly affects the question of whether the captain was vigilant and skilful in the pilot-house. The latter is the only question in the case, inasmuch as it cannot be pretended that the orders which he gave to the engine-room were not instantly obeyed.

Fourteenth Point.

As to the damages.

There is a question as to damages raised by claimants' exceptions (p. 76.) This question is whether the value of the "Reading" and her cargo should be allowed on the evidence, the claimants insisting that she and her cargo, or a part of it, could have been raised and saved.

Other exceptions were taken, but have been abandoned. The opinion of the District Court overruling the exceptions is not in the Record, but is reported in 6 Benedict's Reports, p. 259.

The evidence which bears on this question is to be found on pp. 61 to 67.

It shows that the libellants, after the collision, applied to the Coast Wrecking Co. about raising her; that the agent of another wrecking boat applied for the job to raise her, but would only try to raise her for a lump sum; that then they agreed with a wrecker named Tallmage to raise her for a fair proportion as salvage, (fol. 123, 124.)

It further shows that Tallmage went up there with vessels and got chains under her and began to raise her, when the chains parted (fol. 115 to 120,) and thereupon the effort to raise her was abandoned after Tallmage had worked a month or thereabouts (fol. 120.) The boat lay in about as bad a place as she could be (fol. 122); and in the opinion of an experienced diver who examined her, it would not have been feasible to raise her after the chains parted (fol. 120, 121.)

a. On this state of the evidence, the exception to the allowance of the value of the "Reading" and of her cargo cannot be sustained.

The libellants have lost that value, and lost it by reason of the collision. They are entitled to recover it unless they failed to use proper means to raise the vessel.

b. They used proper means. They employed a skilled wrecker, and he attempted the work. After he abandoned it, prefering to lose the expense and labor of a month's work rather than to go farther, the libellants were not called upon to do more.

The Baltimore, 8 Wall. 377.

The Falcon, 20 Wall. 75.

c. On the evidence it was not feasible to raise her (fol 121). If the claimants thought it was, they should have given some evidence to show it.

The "Thuringia," 1 Aspinall, 283.

d. The language of the District Judge, in his opinion (6 Ben., 261) covers the whole ground.

"The vessel and cargo were not abandoned. Reasonable exertions were made to raise the vessel and save the cargo, by the use of such nautical skill as the owners of vessels usually employ in such emergencies. The exertions were reasonable as to promptness, in view of the fact that the sinking took place in the middle of the month of December. They were reasonable as to character and extent, considering the fact that the sinking was in the swift tideway of Hell Gate. The usual appliances were employed, and the matter was put in charge of persons of competent skill.

The result goes to prove the fact of total loss, and not the want of reasonable exertion."

Fifteenth Point.

In view of all these considerations we submit:

1. That the "Vim" was properly managed, and kept on the southerly side of the channel, as by her signal she may

be said to have agreed to do; and that she is therefore not chargeable with fault.

2. That the "Galatea" did not keep on the northerly side of the channel, as she by her signal agreed to do.

a. She headed, at the collision, directly across the channel.

b. If, therefore, her position before she began that change of course was on the northern edge of the channel, and if she was heading the tide, her stem, at the collision, must have been her own length south-south-west from that northern edge, which places her on the southern edge.

c. If her change was only four points, then her course, when she began to change, was west-south-west. If that was so, she was three points off from her right course when she began to swing, and she was not heading the tide.

d. If she was on her right course of west by north when she began to swing, then she swung off seven points to southward. Such a change of course in Hell Gate is inexcusable.

e. If she was in the true tide when the signals were exchanged off the Bluff, and ran a quarter of a mile on a south-west course without porting her wheel, she was in fault.

f. If she was then in the true tide, and ran south-west to Negro Point, and when she ported only changed one point to west south-west, she was surely in fault for not porting sufficiently.

g. If she was north of the true tide, so as to head on a south-west or west-south-west course, after she passed Negro Point, then her position was wrong.

3. The law required the "Galatea," when meeting a tow, which was coming with such a tide, not to meet her in the narrowest and most dangerous place. It threw upon her the burden, if she undertook to pass in such a place, of most careful navigation, so as always to head the tide and not to swing off across the channel. It calls upon her to pay for the property, which, by her failure to comply with the requirements of the law, she has destroyed.

4. The decree of the Circuit Court, therefore, should be reversed, and the cause remanded, with the direction to affirm the decree of the District Court.

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U. S. Supreme Court.

FREDERICK ROBERT ET AL.,
Appellants,
vs.
STEAM PROPELLER "GALATEA," HER ENGINES, &c.,
Claimants and Respondents.

No. 211.

Statement and Points for Claimants, Respondents, on Appeal from decree of Circuit Court.

STATEMENT.

The decree in the District Court exhibited the singular case of a vessel condemned in damages to the amount of $13,000 and upwards, without first having been found guilty, or even accused upon the record, of any specific offence or fault contributing to the collision. The only thing specifically charged against her in the libel is a defect of machinery or steering apparatus, which was wholly met by the evidence, and so com-

pletely answered that the District Judge, in his opinion, declared that it was established that there was no injury to the steering apparatus or rudder, or propeller or keel of the *Galatea*, which impaired or affected the facility of steering her (fol. 162). The only other accusation in the libel was that owing to the want of proper care and skill on the part of those navigating the *Galatea*, she came in collision with the libellants' vessel, and the opinion of the district judge convicts her of no specified fault whatever; but, having reviewed a portion of the evidence relating only to the tug-boat with which she came in collision, and having drawn from that a conclusion that there was no fault on the part of the tug-boat, he thus disposes of the accusations against the *Galatea* (fol. 165): "I can see no fault on "the part of the *Vim*. *This being so, the conclusion* "*necessarily follows that the Galatea was in fault, either* "*in not stopping sooner than she did, or in throwing* "*herself athwart the tide to the southward, or in not keep-*"*ing to the northerly edge of the true tide, or in not keep-*"*ing her stern to the north of west, or in all of these par-*"*ticulars.*". But he fails to find that she was in fact guilty of any or either of these offences, and, in that connection, makes no reference whatever to the evidence upon which alone she could properly be condemned or acquitted.

The reversal of the decree of the District Court by his Honor Judge Woodruff corrected the error into which Judge Blatchford had fallen. The opinion of Judge Woodruff is very brief and puts the decision upon the impregnable ground that the evidence wholly inculpates the tug-boat and exculpates the *Galatea*.

See opinion, Rec. fols. 176-7.

Certain leading facts are not in dispute and may be fairly stated thus: The collision occurred at half past five o'clock on the morning of the 18th of December, 1869, in Hell Gate, about two hours before sunrise, but on a clear

morning, when a full moon was above the horizon. The tide was half flood, which is about the strength of the flood, and pours through Hell Gate eastward at the rate of about seven knots an hour. The libellants' vessels were the tugboat *Vim* and three coal barges loaded and lashed to her in the usual way, she having on the port side next to her the *Pottsville*, and on the port side of the *Pottsville* the *C. J. Hoffman*, and on her starboard side the barge *Reading*, the three barges carrying about three hundred tons of coal each, and being towed through the gate on their voyage from New York to New Haven. The *Vim* was 70 feet long and 17 feet wide. The barges were respectively 110, 108 and 115 feet long; the tug was 17 feet wide, and the barges respectively 17, 18 and 17 feet wide, making the entire tow, with the tug, 69 feet wide over all; and they were so lashed together that the barges projected forward and aft of the tug about the same distance—15 or 20 feet forward and aft. The *Galatea* was a propeller on the regular line between Providence and New York, and was coming in on her daily trip from Providence. She was 245 feet long and 54 feet wide over all, and of about 1,500 tons burden, having her usual complement of cargo and passengers. The vessels came in sight of each other when the tug, bound east, was about abreast of Flood Rock, and the propeller was passing Negro Point Bluff, a bluff some 40 feet high, and which shut her off from sight before. An examination of the chart will show that they were then a mile distant from each other. The tug at that moment was proceeding at her usual speed with the tow, about four knots an hour, and the propeller at her usual speed of about twelve knots; but the tug had the full force of the tide with her, which was against the propeller. There is an immaterial difference between the parties as to which first signaled the other. The tug claims that immediately on seeing the propeller she blew one whistle, indicating to keep to the right, which was immediately answered by one

whistle from the propeller accepting the direction, and responded to by the tug to the same effect. The propeller insists that she blew the first signal, being one whistle to keep to the right, which was instantly responded to by the tug without any previous signal from the tug. The difference is of no moment, for the parties agree as to the time and place of the interchange of signals, which amounted to a mutual understanding that both vessels should proceed on their way and each keep to the right.

The facts in controversy are all confined to the space and time between the interchange of these signals and the vessels coming in actual contact. The propeller claims upon the proofs that after interchanging signals with the tug, by which she understood that both were to keep on and keep to the right, she proceeded in about the middle of the channel, stemming the tide under a bell "to slow," with her wheel amidships, until she came to the turn of Negro Point. That then, for the purpose of keeping the course which had been agreed, she put her helm hard-a-port, and took and kept the extreme right of the channel, as near as she could safely go without getting upon the rocks on the Ward's Island side. That the tug and tows, instead of taking and keeping the other side of the channel, as had been agreed, and as was their duty, came over to the Ward's Island side of the channel, the wrong side for them to take; and, having struck the cross tide that comes into the channel there from behind Mill Rock, as shown upon the chart, came down with that upon the northerly half of the channel, drifting all the way. That they pointed one way to the south, or nearly so, and drifted broadside on with the channel the other way to the east or nearly so. That seeing them approach in this way, and in such a position that if the tug and the *Galatea* both continued, the tug would come and strike amidships, or aft of that on the port side of her port boat, upon the stem of the *Galatea*, the propeller stopped in her

true place on her right hand side of the channel; and the effect of the stopping was that she lost her headway, holding her own against the tide, but not changing her heading. But the tug and tows drifted on, advancing upon the stem of the *Galatea*, broadside on, or nearly so, and making no progress, across the channel to their right in the direction in which they pointed; seeing which, and that if she held her place they would come in contact, the broadside of the port barge amidships with the stem of the propeller, the latter, when the barge was two or three hundred feet off, rang to back, and reversed her engine, and rang the jingle bell to back strong, all of which orders were obeyed, keeping her helm all the while hard aport. The result of this was, that as she backed the pressure of the tide upon her starboard bow swung that to the left towards the centre of the channel, and at the same time her backing carried her stern in towards Ward's Island, so that while backing she actually touched her stern upon the rocks there; and that while she was so backing, the tug and tows drifted down upon her stem; the stem of the propeller a few feet aft on her starboard side was struck by the port bow of the port barge a few feet from the stem of the barge, the result of which was that two of the barges sunk, and the tug ran the other ashore in Pot Cove.

The propeller insists that from the first to the last she proceeded with the utmost caution, and did everything that was possible to avoid the collision and her witnesses place the point of the collision to the northward, or the Ward's Island side of the middle of the channel, at a place where the barges, under the circumstances had no right to be. At the trial, the great contention on the part of the libellants was that the *Galatea* did not proceed from Negro Point Bluff to Negro Point in the true channel, but to the northward of it, as marked on the chart by the master of the tug; and that as a consequence, when she came out from Negro Point she struck across the channel, so that the

tide upon her starboard bow prevented her obeying her port helm, and brought her right across to the southern or Long Island side of the channel to Pot Rock, where the libellants placed the point of the collision.

And the libellants claim that the tug kept all the way her own right side, that is the Long Island side of the channel, as closely as she could without going out of the channel and into the eddy or reverse tide, which flows backwards there, and that she kept steadily and firmly to that side of the channel. And the collision having occurred, the libellants claim what clearly never was thought of by the navigators of the tug, prior to the collision, that the *Galatea* should have stopped before coming to Negro Point, and so have given up the whole channel to the tug. They insist that the *Galatea* never was to the north of the middle channel; or that if she were there, after turning Negro Point, she lost her place there and came over on to the other side.

The claimants insist that the weight of evidence on all the points of fact in issue is overwhelmingly on their side. The libellants called six witnesses from the tug and tows, namely:

William P. Brainerd, age 31, nine years connected with steam tugs and master of the tug at the time of the collision. He testifies on all the points in issue.

Patrick F. Lynch, master of the barge *Hoffman*, who does not appear to have had any experience in Hell Gate, or any knowledge of the location, whose testimony as to the facts in dispute is limited to these words:

"I saw the boats come together; it was beyond Hallett's Point; the *Galatea* struck us athwartship, cut bow off our boat and through the *Pottsville*, and far enough into the *Reading* to sink her."

James Monk, the master of the *Pottsville*, who also appears to have had no special acquaintance with Hell Gate, describes how his vessel was damaged, and in addition says:

"I was looking at the *Galatea* when she came on; she came straight across into us; after she hit me, she struck the *Reading*; I heard one bell ring on the tug before the *Galatea* came into us; one bell to slow the boat down; can't say I heard bell to stop and back."

Shows what he did with his own wheel, and declares that the *Galatea approached Negro Point so near that he never saw any vessels come as close to the Point as she came* (folios 23–24).

Edward White, master of the *Reading*, who says, after showing what he did with his wheel:

"I saw the *Galatea* come in to the tow; she ran straight across channel; she went through bows of *Hoffman* and *Pottsville*, and came into me, into side."

Christopher Brooks, engineer, was in the engine-room, and saw nothing.

Alfred York, the deck hand (folio 27), after describing the effect of the collision on his boat and the signals by the whistles, says only:

"Can't say how close the *Galatea* was in shore; *I think, as she came out by the Point the tide took her starboard bow and sent her over towards Hallett's Cove.*"

On *cross-examination*, he adds that he *could not, from where they were, see that the Galatea was not in the usual course of vessels coming through the Gate.*

"When we blew we were nearer to Flood Rock than middle of stream in true tide; I don't know whether we got out of the true tide before collision; we tried to keep in true tide; I know where Pot Rock is; I think we were pretty well over towards Pot Rock when we struck, drifting towards steep rock with tide; that is the way tide runs; we were on Long Island side of Pot Rock; *we were nearer to the Pot than to Negro Point.*"

It will be seen that the testimony on the part of the

libellants is in substance limited to the testimony of the captain of the tug alone. The masters of the barges say only in stereotyped phrases—repeated over one from the other—that the *Galatea* seemed to come straight across the tide into them. They state no facts whatever as to the place of collision, or how the barges got to that place, or how the tug and tows headed from the time of the whistles until the collision, which is a most controlling point, or most important of all in which part of the channel they descended from the place where they whistled to the place of collision. The deck-hand who stood on the deck of the tug, on the starboard side, testifies on the the direct, in the same stereotyped fashion as the masters of the barges, and to the same point, and nothing more, and what was drawn out of him on cross-examination shows clearly that the tug and tows, when struck, were drifting with the tide. He gives some slight evidence as to the place of the collision, but nothing whatever as to the movements of the tug, or how she was headed or brought to the place of the collision. An examination of the chart will show that the place of collision might be nearer to Pot Rock than to Negro Point, and yet well over to the north side of the channel, for a line drawn from the shoals projecting from the Point to those projecting from Holmes' Rock, to the north of which line no steamer could go, comes close to the place of collision, as indicated by our witnesses.

Now as to the disputed facts, in their order, and the evidence upon which they must be determined.

First.—As to the place of the collision.

The witnesses differ by the breadth of the channel, or nearly so. They do not differ as to the point in the channel which the vessels had reached when they met. On the one side it is claimed to have been on the word "Pot" at Pot Rock on the chart; on the other that it was on the opposite side of the channel, or nearly so, from Pot Rock, at the "1" of No. 1, on the chart.

The width of the channel is first to be ascertained.

Brainerd, at folio 23, says:

"There was room for both of us between Pot Rock and Negro Point,"

And that that was the opinion of all concerned, is proved by the signals interchanged, and by the mutual agreement by which both vessels were to keep upon their courses, and keep to the right.

Lockwood, at folio 35, says:

"The width of the true tide differs as the tide advances; between *A* [which was the point where the tug answered the whistle of the *Galatea*], and Pot Rock the width of the true tide, at strength of flood, about half flood on full moon, is 300 to 350 to 400 feet. It is wider at *A*, and narrows near Pot Rock, and widens again to the east of the Pot."

Horton, another pilot (folio 59), says:

"The width of the tide where vessels go between Pot Rock and Negro Point is about 300 feet."

Torrey, pilot of the propeller (folio 49), says:

"The channel is 400 to 500 feet wide at Negro Point Bluff; and from there to Negro Point. It is wider at Negro Point. From Negro Point to Pot Rock is 500 feet, and it is wider from that."

An examination of the chart will show that the last opinion cited is most near to the truth. Four hundred feet from the word "Pot" would seem to bring us into close proximity to the shoals already mentioned projecting from Negro Point and Holmes' Rock.

Remembering, then, that the tug and tows, over all, were 69 feet wide, there could seem to be no difficulty or danger, *if both were properly handled and navigated*, in their passing safely, and without the slightest risk through the channel at the point.

As to the actual place of collision, where the stem of the *Galatea* came in contact with the starboard bow of the Hoffman.

Captain Nye, master of the *Galatea*, places it on the north side of the channel at about the letter *N*.

Darling, a passenger, but a pilot by profession, says (folio 46):

"The point of collision was about two-thirds of the way across to the north side of true tide."

Davis, bow watchman, says (folio 49):

"At the collision the propeller's stern was in an eddy, and her bow in tide way, her bow swinging around, and her stern going towards Ward's Island."

Torrey, pilot of the *Galatea*, says (folio 50):

"From time *Galatea* ported she kept at north edge of true tide, she could not have gone a great deal more to right because of rocks."

George F. Nye (folio 53), places it in the north side of true tide.

Scudder, quartermaster, says that collision was at "1" of *No.* 1, on the chart (folio 55), which by measurement will be found to be nearly 300 feet north from the word "Pot" in Pot Rock.

The only evidence to the contrary of all this is that of Captain Brainerd of the tug, who says that the collision occurred on the south side of the channel, on the word "Pot" on the chart (folio 20), and that of his deck-hand, York, which we have already cited.

Second—as to the question of fact—how the tug *headed* and *drifted* from the place where they interchanged the whistles, until the collision.

On this the evidence is all one way, we mean as to her mode of approach, not now as to the side of the channel on which she came.

Captain Nye (folio 40):

"I observed the tow come by Hallett's Point, and come directly over towards Hogs-back, till she got near over to the Hogs-back; then she headed around to the east, and then to the south; she drifted with the tide; she was drifting right at us, as near as I could judge; she drifted right down against our bow."

And, at folio 42 :

"When we first saw the *Vim* and tow, they were going with tide for the Hog's-back, till they got into tide that comes out back of Mill-rock—northerly side of Mill-rock ; that brought them to the northern edge of the true tide ; I observed change of heading of tug and tow ; their bows slewed around to starboard, heading east-southeast, and they drifted down to us broadside ; they continued to head east-southeast ; they moved about east with the tide ; they came to us sideways, on an angle ; they continued to move in that way until the collision ; I could not perceive that they moved over to south side of true tide, from north side of true tide."

Darling :

"On hearing the bell to slow, came out on the forward part of the *Galatea*, and stood there (fol. 45) ; the *Galatea* was then right in true tide, coming down ; I looked forward—saw tug and barges ; she was just then past Hogs-back ; took Mill-rock tide, and that brought her abreast of Hogs-back ; she was then on north side of true tide ; they were pointing about east-southeast, coming down on an angle ; they moved but very little ; tide brought them down ; they came down angling ; they struck *Galatea* on starboard bow."

And, at folio 46 :

"If the tug had gone ahead in the direction she was pointing, she would have cleared the *Galatea*."

Davis (folio 47) :

"I saw the tow go across towards Hogs-back and head off, but she did not appear to go ahead towards south, but drifted along with tide ; I did not perceive that she moved forward in the way she headed ; she drifted down in an angling position—her broadside and quarter ; three quarters of her were visible as she drifted off ; them on port side."

And, at folio 49:

"I saw the tow coming angling before we stopped; her port side toward us; she appeared to be heading to southward."

Torrey (folio 50):

"The tow went in the true tide till they struck Mill-rock tide, and that turned them, and they came towards us; after they struck Mill-rock tide, they were on the north side the channel; from there till they struck they pointed about south-southeast, by compass, across our bow; could not see they made headway in direction they pointed; they drifted side to place of collision, port side of port barge towards us."

George F. Nye (folio 53):

"Tow went towards Hogs-back and then turned and headed to south and east; appeared to be drifting sideways; did not go ahead; I judged the heading south and east was by her porting her helm; she did not move forward in the direction she pointed at all before the collision; she came down sideways in north point of true tide."

Folio 54:

"While we were stopped the tow headed to south and east; the tow did not draw across our bow any."

Scudder, quartermaster:

"I saw the tow (folio 55) till collision; she went over to Hogs-back, with tide, till she struck Mill-rock tide, and then came down with that in centre of true tide, if anything, north of middle; she pointed about southeast or east-southeast, at angle 45 degrees; I judged from port helm; she came angling towards us, not exactly broadside; did not observe her make any progress to south part of tide."

West, quartermaster (folio 56):

"She drifted down to Hog's Back; when she got nearest to Hog's Back she went in north part of true tide; from there, as tow came down, it pointed to south and east; it did not seem to make headway in direction it pointed; it moved angling towards Hog's Back; the last I saw of tow she was 150 feet off, still angling towards us."

Folio 57:

"When we stopped, tow was about 150 to 200 feet off; she was coming for us, drifting bodily towards us, but pointing to south."

Hatfield, first officer, who came out on forward deck when whistle was blown (folio 57):

"I saw the tow before I got to corner; took her to be between Flood Rock and Hallett's Point; a little to northwest of Hallett's Point; kept looking at her; she headed partly across tide and partly before tide; she moved bodily with tide; not broadside, and not end on; at angle."

To this consistent array of seven witnesses—all skilled men, and all actual eye witnesses, the libellants have nothing to oppose, *for the only statement on the part of the libellants as to how the tug was heading at any time is in the evidence of Captain Brainerd, and is limited to the point of time at which he blew his answering whistle*, at which time, he says (fol. 19):

"We were heading about east by south, by compass; we were going under port helm all the time"; so that that fact is established beyond dispute that the tug and tows came to the point of collision *not* in any proper mode of navigation, but drifting—"angling" across tide.

As to which side of the tide she was Captain Brainerd says nothing whatever on the direct examination, except at fol. 19.

"I got to about breast of Pot Rock, in Pot Rock, *swinging my tow to southward* until I steadied them"—and that the place of the collision was on the word "*Pot.*" He draws a line from *Ax* to *Pot,* and says:

"We were at edge of true tide, between that and the eddy on the south. My outside port boat was in true tide, and my starboard boat was at the edge of the eddy."

York, the libellants' only other witness to these points says nothing about them on direct examination. On the cross (at fol, 28) he admits "*that they were drifting towards Steep Rock, with the tide,* the way the tide runs." and says only that "they were nearer the *Pot* than to Negro Point." Is this, with Captain Brainerd's testimony, sufficient to outweigh the concurring testimony of the seven witnesses who saw the tug, on the part of the propeller—that she took the Mill Rock tide, and came down on the north edge of the true tide?

The evidence on the part of the libellants *as to the handling of the helms* of tug and tows corroborates the claimants' testimony, and shows, in fact, how it was that they lost control of them and let them drift down the tide angling as they came. Instead of holding a steady helm to resist the action of the tide and keep her in her true place on the south edge, she was handled in a faltering and hesitating manner.

Captain Brainerd says (fol. 19): That when he received the answering whistle, signifying to go to the right, he told the captains of the canal boats to put their helm to port; and (at fol. 19) that they were going under port helm all the time. But *that he afterwards modifies,* for he says, just afterwards, that when he blew his whistle in answer to the *Galatea,* he was on the port helm, and they all ported their wheels; that he swung his tow to southward until he steadied them. On cross-examination (fol. 21), however, it appears that he did not put his wheels hard a port—ported it just enough to swing his tow to southward—put it five

or six spokes to port, when he could have put it fifteen or twenty spokes over; did not consider it safe to put it any further over, because the eddy, if he had got into it, would have set him back to Hallett's Point; and, at fol. 21, that after the *Galatea's* answer he told the bargemen to port; and when he had swung far enough to southward he told them to "steady"; when he gave them the order to "port" his wheel was a-port; that he kept his tow to southward enough to hold his tow close over to the eddy, but steadied it, so as not to go into the eddy; brought the wheels steady again, "when I got the *Galatea's* whistle and answered it I told them to put their wheels to port again, then steadied, but at collision *our wheels were mid-ships and steady.*"

The masters of the tug-boats show the same weakness and vacillation.

Lynch, master of the *Hoffman*, says nothing except that he was steering her when the *Galatea* came into her.

Monk, master of the *Pottsville*, says (fol. 23): "The captain of the tug first told me to stand by wheel when we were near Astoria ferry; then he told me *to port close by Hallett's Point; I ported.*"

Folio 24:

"I put my wheel seven or eight spokes to port; then got order to steady; did not get second order to port; I steadied when he told me to."

White, master of the *Reading*, says (fol. 24): he afterwards sung out port, and then steady; and cross-examined (fol. 25):

"Had my wheel steady when hit; got second order to port; to 'port a little'; ported two spokes."

It is evident from this that the tug and tows were not handled in that *steady*, consistent and decisive manner which the situation called for.

There is another important piece of testimony which shows, perhaps, how the tug and tows came to be so

badly navigated, and out of control in the crisis which immediately preceded the collision.

Upon the trial there was the marked absence of the fireman of the tug Eugene Brando, who was not produced, although accessible after the collision to the libellants (folio 28). It appeared that at the time of the trial he was on the steamship *Lodona*, then sailing to New Orleans, but York, another of the libellants' witnesses, had seen him in New York on the 5th of the month of May, 1871, in which month the trial took place. Since the appeal he was found and examined *by the claimants*, and testified that after the whistles were blown, he went from the fire-room into the engine-room, and there *found the engineer fast asleep*, lying down on the locker. The bell to slow, which the master of the tug says he rang, had not aroused him; two bells came to stop her, and the *fireman* did not stop her; "shut the steam off, and reversed the lever, and next got two bells to let her go back, and a jingle bell to let her go back lively, and then gave Mr. Brooks, the engineer, a jerk, and told him to let her go back; then Brooks jumped up and gave her back-motion; he did not give him the jerk until after the bell to back, and up to the time of being jerked, he was lying on the locker with his eyes shut, and almost immediately after the vessels came together." (*Vide* evidence of Brando printed separately, at folios 168–173).

If the engineer was asleep, it fully explains how the tug and tows came to be carried farther than they should have been over to the north edge of the channel and so took the Mill Rock tide, as their pilot did not intend. Their speed was not checked as soon as it ought to have been, and the evidence of the engineer of the tug is remarkable in this respect, for it is evident that the counsel for the libellants did not venture to ask him whether the bells that he got were obeyed. He says (at folio 64), that he got one bell to slow, one to stop, two to back, and a single bell to back as hard as he could, and that *at the collision* the engine was working

back. He does not show anything done by himself before he set the engine working back or before the instant of collision, and so gives a striking confirmation to the evidence of Brando. It was not until pressed, upon cross-examination, that the engineer testified (folio 25), "when I got bell to slow, I shut steam off part way; she was wide open, and I shut off half; went on slow until I got bell to stop; then shut off the rest, and she was stopped. [He does not say that he stopped her.] Got three bells altogether; then got jingle bell; then opened to give her steam; turned steam on; after that the blow came."

If, then, any heed is to be given to the testimony in the case, we claim that it is established beyond all contest that the tug and tows were out of their true place, and that either from a miscalculation on the part of their pilot, or from the vacillating handling of her helm, or from the sleeping of the engineer, or from general negligence and want of skill, or from the weakness of the tug in comparison with the great weight of her tows, she came across into the Mill Rock tide, and to the north side of the true channel, and never did get over to her right place on the south side of the channel, where her pilot pretends she was.

Third.—As to the handling of the *Galatea*, and how she came to the point of the collision.

(*a.*) As to her place in the tide from the time of whistling until the collision.

Captain Nye (folio 40):

"As we approached Gate, and were off Negro Point Bluff we were nigher to Long Island shore than to Ward's Island shore, and about in middle of true tide; we went past Negro Point Bluff in middle of true tide * * *; when I whistled my helm was amidships; went on without moving my helm till I got to Negro Point; that carried us in true tide; when I got to

the point I put wheel hard a-port and hauled up around the Point, south of it, as close as I dare go; there are rocks there to prevent going closer—rocks to south and west of the Point; after I perceived she was coming at us I stopped the engine for perhaps half a minute or so; the tug then was nearing us very fast, and I gave two bells to back the engine, and the engine did back; as we commenced to back, the bow of the steamer fell off to the southward; the tow was then heading east-southeast, and she drifted right down against our bows—across our bows; I rang to slow three or four minutes after the whistle blowed; I could not have gone more to the right than I did on account of the rocks on shore; I went to the extreme right of the true tide; when I rang to slow, the tug was half a mile off; the tow was then to the south and west of Hallett's Point; when I rang to stop, the tow was five or six hundred feet from my stem; when I rang to back, the tow was perhaps two hundred feet off, drifting down on an angle to my stem; as she was coming I could not have cleared her to the right; I rang to slow—to go easy; when I got round the point I rang to stop, because I had no chance to go to the northward; rang to back, to keep clear; actually backed before collision; tide swung off our bow to south-east about five Points before collision; tide struck our starboard bow; when we began to back we 'slewed' around; collision slewed us farther, and our stern hit on rocks on point; I felt her hit; it jarred the boat; if, instead of stopping and backing, I had gone on, I could not have passed to the right; had not room, because the tug went so far to the north shore; in turning Negro Point I put my helm hard a-port, and kept it so, I think, until after collision; *backward movement carried us in towards the point.*"

And again, at folio 44:

"We had just opened by Negro Bluff when we saw the tug over Hallett's Point; can't say if she was re-

ported; think I saw her myself; five or six minutes to collision from the time we were off Negro Point Bluff. *N* on chart represents position of *Galatea* at collision. *No.* 1 is position of tow just before collision; boats came together nearly at right angle; when we ported our wheel we were on chart at about opposite 71, at *P*; when I rang to stop, the *Galatea* was very near to *N*, about half length off of our vessel from it; after ringing to stop, next thing was two bells to back; she was then very near in same place; minute or two or so between bell to stop and bell to back—very near a minute, perhaps not more than half a minute; we were going very slow against tide; not going by land any, holding against tide; no bell to slow before reaching Negro Point Bluff."

Darling (folio 45):

"When I went forward the *Galatea* was right off Negro Point, right in true tide, coming down; the *Galatea*, after she had rung her bell, and her stopping bell, and two bells to back, and began to back, that swung her off very little to the southward; the stem of the extreme port barge hit the starboard bow of *Galatea*, about four or six feet back of stem of *Galatea*, and stem of *Galatea* hit port bow of first barge on port side of tug, six or eight feet back of stem of that barge."

And at folio 46:

"If *Galatea* had not rung to stop she would have struck them about two-thirds of way aft on them, on port side of port barge; up to the time *Galatea* rang to stop she could not have gone more to right; as she headed when I came out she could not have headed more to right without going in contact with rocks; the *Galatea* had just about stopped her headway and backed a little, because she 'slewed' her head to south, *and her stern was shoved into Negro Point;* she went in so I felt her touch the shore, but still backing."

At folio 46:

"The arrow on chart is position of tow when I first saw her, two hundred feet from *Galatea;* place of collision N, just west of Pot Rock, where black dot is; wind was northeast."

Davis (fol. 47):

"We came along nearer Long Island shore than the other shore; when I first saw the tow I was up by Negro Point Bluff—off the bluff; judged her to be off Flood Rock; we came up around Negro Point and struck true tide—the ship-channel tide, that comes down by Hog's Back; the *Galatea* kept the northern edge of tide, coming by Negro Point; I noticed that the *Galatea* stopped; when she stopped the tow was some distance off, drifting down towards us; as we stopped, our head drifted to the southward, swung by action of the tide; looked over our starboard bow a little to see tow; I think, if *Galatea* had not stopped, she would have hit tow on port side of tug, amidships; *Galatea* had swung three points or more before she struck."

And at folio 49:

"When struck, the *Galatea* was backing, and, as she backed, her head fell off more; when she had swung most, her stern was towards Ward's Island; she was crossing tide; she was going back and swinging across tide, and when they came together—at collision—*her stern was in eddy,* and her bow in tide-way; her bow swinging around, *and her stern going towards Ward's Island;* eddy is near the Point."

Folio 49:

"The *Galatea* was not across tide till she stopped."

Torrey (fol. 49):

"We came along in about middle of true tide, and about middle of channel."

Folio 50:

"Our wheel was nearly amidships at Negro Bluff; as we came up to Negro Point, we hove it to port; I did it; put it hard over to port; put it to port as soon as we could clear the point, between figures 71 and 85 on chart, and about opposite word 'Rocks;' kept it hard a-port till we struck; we came right around in true tide; collision was at about the word *No* on chart; shut-off bell was rung just before we got to point; after that, bell to stop; we were then heading up by point; after that, two bells to back, and then a jingle bell; I should think we had got backway on before collision; jingle bell was before we struck; that was to back her strong; before collision, I observed our vessel's head swing, caused by backing and tide; it began to swing as soon as we began to back; it swung off four or five points before collision; *back motion carried her stern into shore; stern got near enough to shore to strike; I felt it*"

Folio 50:

"From time *Galatea* ported she kept at north edge of true tide; she could not have gone a great deal more to the right, because of rock; I think we would have struck if we had not stopped; would have struck port side of tow, amidships or aft."

George F. Nye (fol. 53):

"As we came along Negro Point Bluff, we were in true tide, nearly midway of channel, with wheel amidships; we saw tow coming; we blowed one whistle; then we ran along, and rang to slow; soon after we rang to stop; before the collision, we rang to back; jingle bell was pulled after that; we turned Negro Point on north edge of true tide; from Negro Bluff we kept in true tide; I heard Captain Brainerd's testimony; he is not correct as to *Galatea* shooting across tide; our engine stopped and backed; got backway on before collision; head of *Galatea* began

to fall off when we began to back; did not fall off by stopping; fell off about two points before collision; *backway carried her stern in towards land and back at the same time*, and she went bodily with tide; the *Galatea* could not have gone further towards the Point; she continued backing until we touched bottom."

Folio 54:

"We were heading southwest by west till we began to back; the tow was then 300 feet off; we were on port helm, swinging to starboard till we began to back; till then the tow was nearly ahead and a little to starboard, backing threw our bow to port, two or three points; after that, swung a point to port; tide acted on starboard bow, and backing acted to throw us still more to port; while we were stopped the tow headed south and east; the tow didn't draw across our bow any; we were swinging to port; we would have been heading to west to strike her amidships, she heading south and east."

Torrey recalled (folio 54), testified:

"After the *Galatea* stopped, if she had not backed there would have been a collision; would have hit the barge more on the side; we did not come out by Negro Point and shoot across the tide; when we began to back the tow was 200 feet off, nearly ahead of us."

Scudder (folio 54):

"After we got most to Negro Point, wheel was hove hard a-port, and kept so till collision; abreast of Negro Point, bell rung to stop, then two more bells to back, and then a jingle bell; those bells were obeyed as I judged by the motion; when we passed bluff we were, if anything, nearer to Long Island shore; we came about with true tide and we did not shoot across tide; we could not have gone nearer to Negro Point than we did; we have touched off the Point; our head did not begin to swing to the south before we began to back; our head fell off three or four points."

Folio 55:

"If we had not stopped, I think we would have struck port side of port barges a little aft of midships; after we stopped, if we had not backed, I think we would have struck her a little further aft than we did; we got some back-way on before collision; that moved our stern towards land, we drifting with the tide; we touched after collision, while backing, east of Negro Point; when we stopped we headed west, if anything north of west; when we stopped the tow was four or five hundred yards off, nearly ahead, backing near our bow to port; the tow was 120 yards off when we began to back."

West (fol. 56):

"We ported our wheel off Negro Point to go right; we came in true tide from around Point to place of collision; when we stopped we were on north edge of true tide; I saw tow when the *Galatea* stopped; I think if we had not stopped we would have hit the port boat about midships; if we had not backed we would have hit her port boat near midships; I observed no change in position of *Galatea* before she backed; after she began backing her head fell off three or four points to south; her stern moved towards Ward's Island, and she was swinging off with tide."

Folios 56–7:

"When we stopped we were heading pretty near in true tide; we were a little north of centre of true tide; when we stopped, the tow was about 150 to 200 feet off; when we began backing, that 'slewed' our bow to south, towards Long Island, and stern towards Ward's Island."

Hatfield (folio 57):

"When I came out the *Galatea* was in tide-way, on north side of tide, rather nearer to Long Island shore; from time we opened by the bluff, our course was a little to west of southwest, about west-southwest; from

time whistle was blown on north edge of tide, I could perceive a difference in motion from about time whistle was blown, as though slowing; on turn of point she was stopped—the east point of the turn; we were then in tide-way, gradually drawing around Negro Point to westward; before the vessel struck, the head of the *Galatea* fell off not more than one and a half to two points; at collision I could see *Galatea* was sagging with tide by the land; the point of collision was the north and east side of true tide; if we had not stopped, we would have struck the tow aft of her midships, on port side; if we had not backed we would have hit her a little forward of midships; we did not come out from under Negro Point and shoot across the tide."

As against this body of evidence the libellants prove almost nothing as to the movements of the *Galatea*. The whole of it is as follows:

Brainerd (folio 19):

"When I was about abreast of Flood Rock, I saw lights of the steamer; I saw their head-light—white; their green light and their staff-light—white; stern-light up high; I was about half-way from Flood Rock to Astoria shore when I first saw the lights of the steamer; saw them clear of Hallett's Point, and across the land at Negro Point, and they were then, as I thought, up about Negro Point Bluff; I saw the lights come out past Negro Point Bluff; the land at Negro Point, on coast survey chart, is low and flat; I could look right across the land at Negro Point."

"We received one whistle from the steamer; blew whistle in return (folio 19)."

"When I blew my answering whistle, I saw her hull coming down by the low land at Negro Point, very nigh abreast of the point; at that time I saw only her green light, head-light and stern-light; never saw her red light before the collision. * * * From the time I

saw the *Galatea's* hull, she came out by the Point across the tide, into me, at the word *Pot*" (fol. 20).

"I watched the *Galatea* from the time she opened out at Negro Point; I observed no change in her heading after she came out from the Point; I think she went in a straight line across the tide and into me, on a line I have marked on the map; I heard no bells on her, and observed no slacking of her speed; she was going against a seven-knot current; I did not see her swing or change her direction; I think *Galatea's* helm hard a-port from time she came out from Negro Point till collision; if she had kept that course she would have hit east of Hallett's Point" (fols. 21, 22).

"I think *Galatea* was under port helm from Negro Point till she came into me; the tide caught her starboard bow as she came out by Negro Point with her wheel hard a-port; she would not answer to her wheel till she got her length into the tide, and she would then gradually swing to starboard; if she had been farther into true tide, and not close to Negro Point, she would have felt her port wheel." (fol. 22.)

"The tide took the stem of the *Galatea* just after she opened by the Point; I thought when she struck the tide she would come clear over to us before she got her head around to tide" (fol. 22).

Lynch, master of the *Hoffman*, says not a word of the movements of the *Galatea*.

Monk, master of the *Pottsville*, says only: "I was looking at *Galatea* when she came on; she came straight across into us; I never saw any vessel come so near to Negro Point as she came; when I first saw her, *I thought she was closer to Negro Point than I had ever seen a vessel before; I think she was her own length off from Negro Point*; from Negro Point the *Galatea* went across the tide" (fol. 23).

White, master of the *Reading*, says only: "She ran straight across channel" (fol. 24).

What *York*, the deck hand, said, has been already set forth.

It is not difficult to estimate the relative weight and value of the evidence on the one side and the other as to the movements of the *Galatea*.

We submit that it is absolutely settled by the evidence that the *Galatea* came, as her pilot and other witnesses testify, in her proper place in the tide from the bluff to the point under slow bell; that she there put her wheel hard a-starboard to go to the right as had been agreed; that she came up by Negro Point as close as safety permitted, on the right hand of the channel; that, seeing the tug drifting upon her at the place, she stopped, and finding that if she continued stopping the tow would strike her in a way that would be utterly destructive, she backed, as the situation and the statute imperatively required; and in so doing her head fell off with the tide and her stern ran into the rocks; and thereby the collision, though not wholly avoided, was mitigated and rendered much less destructive than it otherwise would have been.

The evidence on the part of the libellants as to her movements hardly comes up, in any point, to a contradiction on matter of fact. All it amounts to is a conjecture or judgment of the master of the tug and the deck-hand, which must go for what it is worth, by which the falling off of her head, as her witnesses show, was mistaken for a shooting across the tide as she struck it, and which, in the libel, and in the evidence of the libellants' witnesses, is erroneously accounted for by a supposed weakness in her steering power from the injury that had happened on a previous trip to the propeller.

On this point see the allegations in the libel (fol. 3), and the evidence on the part of the libellants; of Robert (fol. 30) and Gladwish (fol. 26).

As to the real facts of the slight injury that the *Galatea* had previously sustained, and that it had no

effect in impairing her strength, either to her rudder, keel or steering power, see evidence of claimants:

Capt. Nye, fols. 42–44.
Darling, folio 46.
Torrey, folio 51.
Mulford, folio 52.
Reynolds, folio 56. (See particularly, Reynolds' diagram, in evidence.)
Douglas, folio 58 and
Opinion of District Judge, 162.

A great many expert witnesses were called by the libellants to show that a tug with tows could not safely go south of Pot Rock without incurring a risk of being taken by the eddy, which is a reverse tide, and carried towards the land at Hallett's Point; but as there was ample room, on any view, for both the vessels, properly navigated, between Pot Rock and Negro Point, their evidence was properly treated, even by the District Court below, as immaterial.

POINTS.

THE TUG WAS GUILTY OF GROSS FAULTS WHICH ALONE PRODUCED THE COLLISION.

First.—*Drifting down the tide angling, as described by all the claimants' witnesses, and not denied by libellants.*

However caused, this was a gross fault. It was expressly charged in answer, and should have been disproved, if it could have been.

Claimants are not bound to show how this happened. That is for the libellants.

If, as libellants claim, she had ample power to handle her tows through the Gate in a skillful and

seamanlike manner, it was gross fault not to do so.

If not, the fault is the same, of undertaking to do what she could not.

If truth can be established by evidence, this fact is made out. Seven eye-witnesses proved it; nobody denies it.

The district judge does not allude to it, or find any fact to the contrary.

He does allude to their place in the tide, not at all to the way they headed or came down the stream.

This drifting down sideways accounts for the witnesses in tug and tows not seeing the red light of the *Galatea*.

Second.—*She came down all the way on the wrong side of the channel, north of the middle, and was there when struck.*

If a vast preponderance of evidence can establish a fact, this fact is established.

On the one side eight witnesses—all perfectly familiar with the locality—including three very experienced pilots, substantially concur in describing her as passing over to the north side of the channel, and there striking the Mill Rock tide, and then angling down on the northerly half of the channel, pointing in the way in which she should have gone, but not moving forward in that direction.

On the other side, the master of the tug stands alone. The three masters of the tows, who must have known the truth on this point, say not a word about it, and libellants did not dare ask them.

The deck hand contradicts the captain of the tug on this point. His evidence more nearly concurs with that of the claimants' witnesses, for while

Brainerd says that the place of collision was on the word Pot, York *thinks* they were pretty well over to Pot Rock when they struck, "*nearer to Pot than to Negro Point.*" That might be and yet leave them in the northerly half of the channel; for the channel does not come close up to the Point.

The district judge says: "I think the weight of evidence is that the *Vim* and her tows were as far towards the south edge of the true tide as they could be required to go."

But what weight? Of what evidence? Of whose testimony? He refers to no testimony, nor does he fix the place.

She should by her own showing have been on Pot Rock and come down on the southerly edge of the channel to that point, for that is what her master claims she did do; but as to that fact he is overborne by the testimony, eight to one, and the failure of his own witnesses to support his statement is fatal.

The district judge, neglecting the evidence, finally bases his finding that the *Vim* was in her right place, upon the angle at which the vessels came together, in connection with the length of the *Galatea*, 245 feet, as compared with the width of the channel, which he puts at 300 feet.

The proofs show that the channel is 190 feet wider than that.

But, given the propeller, as the proofs show her when she began to back and to fall off, in the extreme northerly edge of the true tide, and her head falling off four points, her stern at the same time backing into the rocks on the Point, so that she turned as on a central pivot, and it is utterly impossible to bring her stem to the south side of the mid-channel, or south of where our witnesses fix the point of contact.

In forming his angle of contact, the district judge overlooks the settled fact that the tug was

pointing to the southward, instead of east with the channel, as she should have been, and treats her as if he found not only the stems but the whole bodies of the tug and tows in the south half of the channel.

Third.—*In the timid and vacillating handling of the helms of the tugs and tows, showing that her pilot was not master of his crafts and of the situation.*

He first ported a moment, then he steadied, then he ported a little again, then steadied a little, &c., and finally at the collision *his wheel was amidships.*

This alone is sufficient to account for his vessels not going the way they headed, but pointing one way and drifting another.

This fault is unquestionably proved by the libellants' own witnesses, whose statements as to the handling of the helms fully corroborates the evidence of the claimants as to the appearance which the tows made as they drifted, presenting always the port side of the port tug.

Whatever the strength of the *Vim's* engines may have been, her wheel alone could not govern the course of the whole of the tows without the aid of their wheels, else why call in the aid of the other helms.

Lynch, master of *Hoffman*, does not appear to have ported at all (fol. 23).

Monk, master of *Pottsville*, was told to port *close by Hallett's Point, and then ported*, and shows on cross-examination exactly how much: "I put my wheel seven or eight spokes to port; *then* got order to steady; did not get second order to port; I steadied when he told me to."

White, master of *Reading*: "Captain sung out port and then steady; had my wheel steady when hit; got second order to port a little; ported two spokes."

If the situation required them to port for the purpose of crossing the tide in whole or in part, it is obvious that the little porting they did must have been, as it was, wholly ineffectual.

The captain's account of handling his own helm is no more satisfactory.

It is clear that in his own judgment they *ought* to have been going under port helm all the time, for, on direct examination, he swears positively that *they were so—all the time* without any change or qualification. But his cross shows that he kept shifting from port to steady, and was afraid to go where he belonged—first port a little, then steady a little—all the time.

Fourth.—*All the parade of evidence on part of the libellants about the eddy is immaterial; it is a mere after-thought brought in upon the trial to excuse this manifest weakness and fault of their pilot.*

There was ample room for both vessels in the true tide without either going into the eddy, if they had been rightly handled.

It did not occur to Captain Brainerd that there was any danger if he did get into the eddy, for he says himself (fol. 23): "I don't think I would have gone ashore if I had got into the eddy."

The eddy is a bugbear raised for the purposes of the trial; half a dozen pilots are brought in to tell what might possibly have happened, what has happened in former times to hapless sailing crafts badly handled in the Gate, but no one of them a l

had ever heard of any steam craft suffering from that eddy.

But a sufficient answer to all the talk about danger from the eddy, is that no such idea was present to the minds of either party to the collision at the time. Both agreed that there was ample room for both without nearing the eddy, and Captain Brainerd thought of the eddy, not as involving any danger, but only as putting him back if he did get into it.

Fifth.—*In her sleeping engineer, whereby the orders which the captain of the tug gave were not obeyed promptly, from which it ensued that the tug and tows went on farther and at greater speed than he intended and than they should have done, and reached the Mill Rock tide and the north edge of the true tide before descending, as the proofs show.*

Brando's evidence stands unimpeached. It is strongly confirmed.

1st. By the failure of the libellants themselves to call him in the District Court, a failure that must have been intentional, for the collision occurred in December, 1869, the trial took place May 18th, 1871, and we show by their own witness, York, that Brando was running on a propeller between New York and New Orleans, and had been in New York, to their knowledge, on the 5th of the same month.

2d. By what the engineer fails to say.

3d. By what the engineer does say.

4th. By the course of the tug and tows as proved, which is just what it would have been if the order to slow was not promptly obeyed.

THE GALATEA WAS NOT IN FAULT—NO ACT ON HER PART CONTRIBUTED TO THE COLLISION.

First.—We protest against the principle of the District Court judgment imputing guilt to us, as a conclusion from the alleged innocence of the other party. The law warrants no such conclusion. The *Galatea* must be justified or condemned from her own conduct; and she must be convicted of some specific fault before she can be charged in damages.

Second.—As to the only fault ascribed to her in the libel, defect of power, either in steering or sailing, by reason of the loss of one of the four blades of her propeller. The evidence wholly disposed of it. It was substantially abandoned in the District Court, and was fully negatived by that court.

Third.—As to the suggestion that she should have stopped outside the Gate, suspending her voyage and leaving the whole channel to the tug. There is no warrant for this in the law, or usage, or the rules of navigation. There was ample room for both, and so both vessels agreed on the spot. The one whistle of the tug blown in answer to her one whistle was a direct assent and invitation for the propeller to come on. It showed the concurring judgment of the pilots in charge of both vessels that there was room for both.

If this was an error of judgment, both were equally at fault. The being in the Gate together cannot be charged to either alone;

and if the court applies a new rule prohibiting the two from being there together, both must be charged and the damages apportioned.

But there is no such rule, and there was no such error of judgment.

The united width over all of the tug and tows and the propeller, was only one-third the width of the narrowest part of the channel through which they were to pass. There was, therefore, abundant room for both, if both had been properly handled.

True, the tug could not stop and the propeller could have done so. But there was no more reason for her doing so east of the Gate than at any other point between Providence and New York.

True, she knew that she was liable to meet the tug in the channel at or near Pot Rock, but she had a right to expect that the tug and tows would be properly handled, and therefore could not expect to find them on her side of the bed of the stream, nor that they would come down broadside to or "angling down" instead of presenting their stems as they should have done.

In view of the width of the channel, as compared with the size of the craft that were to meet there, going on and not stopping outside, cannot be charged to either, if she shows herself to have been properly and cautiously handled and in her right place when they met. The case of the *Galatea*, therefore, depends upon the question next to be considered, whether she was properly handled and was in her right place at Negro Point.

Fourth.—The *Galatea* did not proceed from the bluff to Negro Point, as the libellants pretend,

in the eddy north of the channel, so as to strike across the tide in turning the point, and shoot across to port.

For this proposition we rely upon the proofs, the contrary rests merely in conjecture and assertion.

Such a course would argue the grossest want of care and skill. She was in the hands of skillful and accomplished pilots who knew the tide, and what could or could not be done in it; and all the eight witnesses of the claimants concur in proving her to have kept in the true tide—stemming it, as she should have done, up to the Point, and until she began backing. There is nothing whatever to impeach or impair their testimony.

Those on the tow and the tug were not in a position to observe, seeing her across the land at Negro Point, as they did, what her position was with respect to the channel there, and they mistook the movement of her head in falling off by backing, *after* she had turned the Point, for a direct shooting across the tide, *as* she turned it. Their own testimony shows this, and does not purport to be other than a conjecture imported into the case with the misinformation as to her being disabled.

The captain of the tug observed no change in her heading after she came out from the Point, and thought she went in a straight line across the tide, and into him, and the two masters of the tows and the deck-hand echo his opinion in the same words—and that is all there is of it; they state no fact or circumstance which warrants the opinion. No fault under this head can be imputed to the *Galatea* unless she is to be tried upon conjecture, assertion and argument, instead of upon the proofs.

Fifth.—The *Galatea* exercised the utmost caution, as the rule (20) requires, from the time she came in sight of the tow, and no precaution can be suggested that she did not adopt. After the interchange of whistles she slowed, and continued with steam shut off up to the Point, against a seven-knot tide—as she came to the turning of the Point, she put and kept her wheel hard a-port to keep to the right, as she had agreed, and was bound to do. She kept up by Negro Point as near as she could with safety go, and not get upon the rocks; she was in her own place, on the right of the channel, and when she saw the tows coming on her side of the channel, and presenting their port side, and running directly upon her stem, she stopped so as to lose all headway; just holding her own against the tide; and finally, when she found that this was not enough, that if she stood still without retreating, the port side of the port tug would strike amidships on her stem; she backed, whereby her head fell off, and greatly mitigated the force of the blow, and the damage resulting from the collision.

Here again, as from the first, we appeal to the proofs. The evidence of Captain Nye, fols. 40–44; of Darling, fols. 45, 46; of Davis, fol. 47; of Torrey, fol. 50; of Geo. F. Nye, fol. 53; of Scudder, fol. 55; of West, fol. 56, demonstrate the truth of the statement, and that stemming the tide, as she was bound to do, she made and kept the sheer to starboard on purpose to go to the right, as the agreed signals required her to do.

Her witnesses do not say, and nobody says that she kept the middle of the true tide until the collision, but until she put her helm

hard a-port to keep to the right on turning Negro Point, which is a very different thing. *Vid.* The *Java*, 14 Wall., 198.

Sixth.—As to the suggestion that it was a fault in the *Galatea* to back immediately before the collision upon a port helm, instead of standing still, whereby her head swung off a few points to the southward.

No such point was charged in the libel, nor alleged in the course of the trial. The backing and the change of heading were unobserved by the captain of the *Vim*, whose testimony was that from the time the *Galatea* came up by Negro Point she neither changed her heading nor slackened her speed.

The fact of the backing, the reason for it and the effect of it, are clearly proved by Captain Nye and the other witnesses, on the part of the claimant, who prove beyond doubt and without dispute that the *Galatea* came up by the Point on the northerly edge of the true tide, leaving nearly the whole width of the true tide for the tow to pass to the right, as had been agreed, she keeping as far to the right as she safely could, and avoid running on the rocks; that the tow still came drifting down sideways towards her on the northerly edge of the tide, making no headway to cross it in the direction she pointed; that this being the relative position, the *Galatea* stopped, because if she had not stopped she would have struck the tow aft of amidships; that still the tow drifted down upon her, still on the *Galatea's* side of the tide and close to the northerly edge of it, and so that if she continued standing still, the port side of the *Hoffman* would have struck her stem about amidships or just forward of that; that see-

ing this, and to avoid it, or, if not avoiding it, to mitigate the force of the collision, the *Galatea*, immediately before the collision, which was inevitable from the blunders of the tow, backed her engines, and got a little back way on before they came together; that the effect of this and of the action of the tide upon her was threefold, and in all these respects tended actually to avoid, and to lighten the force of the blow, viz.: 1st. Her head dropped off about three points to the southward, so that the blow was removed from amidships to the extreme forward part of the tow, whereby the tug and the *Reading* were saved. 2d. The tide bore her down so that by so much the force of the blow was lightened by the difference between her downward motion with the tide and that of the tow in the same direction; and 3d. The backway which she got on carried her stern (and with it of course her stem) in toward the Point and out from the tide.

Notwithstanding the backing, the actual place of the collision, the point where the bow of the *Hoffman* came in contact with the starboard bow of the *Galatea* is proved to have been on the extreme northerly part of the true tide. This is established by nine intelligent witnesses against one. Her stem for all her backing and swinging, is not found half-way across the tide, or a third of the way across it as the counsel for libellants insist, but only removed from the point on the tide where it had been before she began to back by a distance, measured from amidship on the *Hoffman*, or just forward of that to her stem, certainly not over fifty feet. This is just the result which the joint effect of the back motion and the swinging, would naturally produce

upon her, and the actual result which was produced upon her by the undisputed evidence. It was necessary for the plausible presentation of this point by libellants' counsel, that he should insist, as he did, that the *Galatea*, when she stood still, was about in the middle of the true tide, and that the actual result of her backing was to leave her stern where it was and simply to throw her head over across the tide more in the way of the tow; but both of these positions are wrong, as a reference to the evidence must satisfy the court. She left the middle of the true tide when she ported her helm below the Point; and the inevitable effect of her porting was, as it is proved to have been, to carry her over to the northerly edge of it above the Point, and before she stopped; and that the effect of her subsequent backward motion, was to draw her in towards the Point as her head swung off, is made further evident by the incontestable fact that her further backing actually brought her stern upon a rock under the east side of the Point.

We rest this position, as all the preceding, upon the evidence, and appeal with perfect confidence to that.

(*a.*) The proofs demonstrate that in the judgment of those in charge of the *Galatea*, and upon the actual position at the moment of backing, that movement was a proper and prudent precaution to mitigate the force of a collision then inevitable, and that it had that effect. There is no evidence to the contrary, and nothing opposed but the suggestion of counsel that perhaps there might have been a collision if the *Galatea* had not backed. The tug's position as proved affords an almost

mathematical demonstration of the correctness of the *Galatea's* movement in backing, and that no harm, but great good came from it. Libellants' counsel exaggerates the extent to which her bow fell off; he ignores the fact of her backing motion drawing her stern out from the tide and in towards the land, which counteracted or diminished the effect of her slewing to put her across the tide, and leaves out of view the actual movement of the vessel down the tide while backing. It is clear that her stem was not at the moment of the collision further in the tide from the northerly edge of it than the stem of the *Hoffman*, for they met at about a right angle. The stern of the *Hoffman* was at the northern edge of the tide; she was 110 feet long, and was angling across the tide at an angle of not less than forty-five degrees. The *Galatea* was 245 feet long, and by her swinging made at the moment of collision about a right angle with the *Hoffman*, so that her stern must have been well out of the true tide to the north of it, quite as far to the north of it as her stem was to the south of it, and in close and dangerous proximity to the rocks at Negro Point, as the witnesses describe. The duration of the backing before the collision can also be very nearly estimated, not by the witnesses' measures of minutes, which are always unreliable, but from the actual position. The uncontradicted evidence is that the tide was running seven knots, and that at the moment when the *Galatea* began to back the tow was not more than two hundred feet from the stem of the *Galatea;* the tide had full effect upon the tow and began to carry the *Galatea* with it. Before the collision it may have carried the *Galatea* not over 50

to 100 feet, which gave the tow 250 or 300 feet to pass down to the point of collision, and at seven knots she must have passed this distance in much less than half a minute. The downward movement of the *Galatea*, of course, reduced the speed at which the tow came into her, say one-third, or from seven knots to five.

(*b.*) But the 16th article of the act of Congress absolutely enjoins upon a steamer, placed as the *Galatea* was with respect to the tow, at the times when she executed those movements, to stop and to back, and if she had not done so, it would have been urged as a fatal fault on her part. She was approaching the tow in such a position that a collision was highly probable, and in such cases the 16th article requires her to slacken her speed, and if necessary, *to stop and reverse;* and upon the evidence the court must have held her in fault if she had failed to do so and the expected collision had ensued. The positive requirement of the statute concurred with the judgment of those in charge of her, to stop and to back. How, then, can her doing so be alleged or suggested as a fault?

(*c.*) But even if the court could avoid the application of the 16th article to the position, and could conclude that if she had stood still there might by possibility have been a hairbreadth escape from the collision, then we are entitled to the benefit of the rule so often applied that even an error of judgment committed in the jaws of a collision rendered imminent by the fault and blunder of the other vessel, is not to be attributed as a fault. The tow, by her own gross fault, after agreeing to

keep to the right, kept steadily to the left, and occupied just the place in the tide where she ought not to have been, and just the place where the *Galatea*, after the signals, belonged, and the only place to which the latter could go. Whether this arose from mismanagement, from her want of power, from the untimely nap of her engineer, from her helm not being kept sufficiently to port (*for the captain says that at the time of the collision he had his helm amidships, and never more than five or six points to port—never more than a quarter part over*) or from whatever cause, it was altogether her fault or her misfortune, and in no possible point of view did the *Galatea* by any act or omission help to place her in that position. She was within 200 feet of the stem of the *Galatea* and drifting inevitably on to it when the *Galatea* began to back, and if in such a position the court conclude, upon the evidence, that it might possibly have been better not to have backed, or backing, not to have kept a port helm, it cannot, within the spirit of the rule referred to, call the different judgment of the master and pilots of the *Galatea* a contributing fault.

Last.—The decree of the Circuit Court dismissing the libel, should be affirmed with costs.

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